

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
JANUARY 28, 2010 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Tad Heuer, Member

Slater Anderson, Member

Brendan Sullivan, Member

Mahmood Firouzbakht, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:05 p.m.)

CONSTANTINE ALEXANDER: The Chair will reconvene the meeting of the Zoning Board of Appeals. We've been in Executive Session to discuss pending litigation, but the Executive Session is now over. And the first order of business actually is to elect a Chairman and a Vice Chairman for the year to come.

So, anyone wish to make a motion?

BRENDAN SULLIVAN: I would make a motion to nominate Constantine Alexander for the ensuing year.

CONSTANTINE ALEXANDER: Is there a second?

TIM HUGHES: Second.

CONSTANTINE ALEXANDER: On this matter just the regular members of the Board are voting and those are Tom Scott, Brendan, myself and Tim.

Any other nominations?

Put it to a vote. All those in favor of electing myself as Chairman, say "Aye."

(Aye.)

(Scott, Sullivan, Hughes.)

CONSTANTINE ALEXANDER: Good for you. Now we need to elect the Vice Chair.

BRENDAN SULLIVAN: I nominate Tim Hughes for the Vice Chair.

CONSTANTINE ALEXANDER: I can't second.

THOMAS SCOTT: I second.

CONSTANTINE ALEXANDER: Any other nominations for Vice Chair?

All those in favor of electing Tim as Vice Chair of the Board for the ensuing year, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Scott.)

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: Now we'll get on to the business of the night. I'm going to first call case No. 983 -- sorry. 9793, 15 Crescent Street. This is a case that was heard, continued case heard, but I believe there's a request to continue it again, am I right, Sean?

SEAN O'GRADY: That's correct, yes.

CONSTANTINE ALEXANDER: We're just continuing the case.

The Chair moves that this case be continued until --

SEAN O'GRADY: April 8th.

CONSTANTINE ALEXANDER: -- April 8th at seven p.m. The Chair notes that there is a waiver of time for rendering a decision in the file, and so the motion to continue be

made on the condition that the petitioner once again modify on the signage, the notice of the date of the meeting to be April 8th.

All those in favor of continuing this case until April 8th at seven p.m., say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case continued.

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

(Discussion off the record.)

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Slater Anderson, Mahmood Firzkouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9871, 20-22 Griswold Street. Anyone here on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is here on that matter. The Chair is advised that the petitioner wishes to further continue this case until --

SEAN O'GRADY: March 11th.

CONSTANTINE ALEXANDER: -- March 11th at seven p.m.

TIM HUGHES: Case heard?

SEAN O'GRADY: Not heard.

CONSTANTINE ALEXANDER: This is a case not heard.

The Chair moves that this case be continued until March 11th at seven p.m. The Chair notes that there is a waiver of the time

for decision in the file, and so the motion be made on the condition that the petitioner modify the signage to reflect the new meeting date.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Firouzbakht, Heuer, Anderson.)

(Discussion off the record.)

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9855, 45 Foster Street.

Anyone here wishing to be heard on that matter?

ATTORNEY SHAW MCDERMOTT: Yes, Mr. Chairman, please.

Mr. Chairman, members of the Board --

CONSTANTINE ALEXANDER: Give your name and address for the Board.

ATTORNEY SHAW MCDERMOTT: For the record, my name is Shaw, S-h-a-w McDermott and I'm from KNL Gates, LLP and I represent Mr. John Greenup who is here. Campbell Ellsworth who is the architect on this project is also here to be of assistance if necessary.

CONSTANTINE ALEXANDER: Yes, sir, you may proceed.

ATTORNEY SHAW MCDERMOTT: Thank you, Mr. Chairman as you --

CONSTANTINE ALEXANDER: You can sit if you like.

ATTORNEY SHAW MCDERMOTT: Thank you, appreciate it.

Thank you for entertaining us in this case tonight. And in essence I think the Board, in part, may be familiar with some of the background in this case, but the property issues located at 45 Foster Street was owned previously by Mr. Matthew Curtis who came to this Board and received two --

CONSTANTINE ALEXANDER: Excuse me, sir, unfortunately -- are the mics working tonight?

SEAN O'GRADY: I believe so.

ATTORNEY SHAW MCDERMOTT: Does that work?

CONSTANTINE ALEXANDER: If you wish to hear better or see things better, you can

come around the side and raise your hand and we'll try to speak up.

ATTORNEY SHAW MCDERMOTT: I'll try again.

As you are aware, this property is located at 45 Foster Street and it is in the marsh neighborhood district. The property came -- was the subject of a hearing before you some two plus years ago on a request for two variances in sequence. First to seek -- to add an addition 900 square feet to the extent structure which had about 200 square feet in it. And the second was to allow for parking on the premises. Those variances were granted and no appeal was taken from the issuance of those two variances. Over the course of time some total of seven different permits were and variances and certificates of appropriateness aggregated altogether were issued by the City of Cambridge. The

controversy arose when Mr. Curtis went to rehabilitate the structure that was the original 1200 square foot structure, and the City of Cambridge issued a stop work order with respect to the rehabilitation that was going on there. The various other hearings that happened since, and as you know, have been in court, two courts, on issues related to this, but the essence of all this is that tonight we are here before the Board seeking a determination from the Board of one or both of two things. And the first -- and it deals strictly with the structure that was the original 1200 square foot structure.

Mr. Greenup would like to take up, after a two year moratorium on any activity pertaining that -- arising from concerns of the Historical Commission, like to take up where the project last left off and to remove what everybody was concerned here called a blithe in the neighborhood and say half finished,

very unfortunate looking piece of set of lumber I guess you'd call it, and it's deteriorating quite badly over the two and a half plus years or so since the stop work order -- two years and several months since the stop work order was issued.

With regard to the reconstruction of the 1200 plus square foot houses that were there, it has been our view in stating to previous occasions to the Board that pursuant to General Laws Chapter 40-A, Section 6, paragraph first, that no Zoning will leave this action required to rehabilitate the structure. The reason for that is without regard to the history that has occurred before and the number of pieces of lumber that may have been taken out and the number that may remain, the essential point is that under the state-wide zoning law a single-family homeowner is entitled to rehabilitate, reconstruct a house so long as there is no

increase in the nonconformity related to that reconstruction. And that view was affirmed to the cases of Burian and Bransford that dealt with the concern that many localities have in the supreme judicial court had about McMansion relation that is to say questions that arises when somebody takes a single-family house and tries to increase the footprint or the queue of a non-conforming structure, and they were concerned about whether the exemption from zoning relief would rely on those circumstances. But as you all know, they did reaffirm to you in various ways this did review in two cases. So long as you build, rehabilitate, reconstruct the premises, the same footprint and the same cube, there would be no need for zoning relief in general terms. That is what Mr. Greenup has proposed to do in this instance to pick up where he last left off and to, in the end, construct a premises that had

been permitted in the full conformity of all the existing permits and the variances so that you'd have the appropriate house for the neighborhood in accordance with all the Historic Commission requirements and so on and get rid of the blithe and frankly return the property to the tax wells level that appropriate should.

CONSTANTINE ALEXANDER: Put the blithe aside for a second. Take the case very simply. Before this all started, we had a 1200 square foot house on that property.

ATTORNEY SHAW MCDERMOTT: Right, 1286.

CONSTANTINE ALEXANDER: Roughly 1200. If we were to grant the relief you're seeking and you go forward, what will result is a 2100 square foot house?

ATTORNEY SHAW MCDERMOTT: That is true. 21 plus the addition.

CONSTANTINE ALEXANDER: The 900

square foot addition.

ATTORNEY SHAW MCDERMOTT: Yes.

CONSTANTINE ALEXANDER: Chapter six and chapter 40-A which you cited where the reconstruction extension does not increase the non-conforming nature of said structure.

ATTORNEY SHAW MCDERMOTT: Yes.

CONSTANTINE ALEXANDER: And aren't we going from a 1200 square foot house to a 21 square foot house roughly, and doesn't that increase the nature of the nonconformance and therefore why are you entitled for relief under this chapter?

ATTORNEY SHAW MCDERMOTT: What's happened is the history is convoluted here. You granted a variance with respect to the addition.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SHAW MCDERMOTT: We're examining the question of what happens with that 1200 square foot reconstruction, and it

is that to which the zoning code would and the purification would address themselves, it's a little bit in reverse order because of the history. But at first if this were just coming before you to build up the original structure, so long as the cube or the same and the square footage -- the footprint were the same, the exemptions would apply. You already granted the zoning relief with respect to the extension. So the question is what do you do about the original structure?

CONSTANTINE ALEXANDER: So you're saying basically you take zoning relief and we grant the variance be granted for the issuance as a given that's out of the equation?

ATTORNEY SHAW MCDERMOTT: Right.

CONSTANTINE ALEXANDER: And the 57 apples to apples comparison is 1200 feet to 1200 feet and you're not enlarging the conformance?

ATTORNEY SHAW MCDERMOTT: That's correct. The hasn't for which no zoning relief issues have been presented to this moment, but because of the circumstances in question we want to be clear with the Board what we're doing before we undertake to do it. We just want to build exactly that house that was there with the same dimensions on the same footprint, etcetera because we can't go back and revisit what's been granted with the variance and that's been granted and the time for appeal has elapsed.

CONSTANTINE ALEXANDER: Just so I'm clear, if we were to accept that position and we were to find that you increase you're benefit of the second clause and you're not increasing the nonconformance of the structure, do we have to make as a Board have to find further findings and is the case over?

ATTORNEY SHAW MCDERMOTT: Well, I actually think if you're asking since you're

really turning me for a legal judgment on this, my legal judgment would be that the case would be over. You could make that finding consistent with the application. If for reasons related to the Cambridge Zoning Code, any other person in the room might have comfort that because there is a question about whether there's been, you know, effectively there's some biometric change for the whole picture, there is a provision of Cambridge Zoning Code where you go red without regard to the statewide convention without complexity which says if you increase the non-conformity by 25 percent you come for a Special Permit. What we said why we think that's not necessary if you were to make that finding that for your purposes and for, you know, whatever Mr. O'Grady and Mr. Singanayagam would want to see the Special Permit issue, that's why we would say in the alternative that's the acceptable

result as well.

CONSTANTINE ALEXANDER: Why don't you think that allowing you to build a much larger structure on this lot would not be a substantial detriment to the neighborhood?

ATTORNEY SHAW MCDERMOTT: Well, the question assumes a much larger structure. And we -- I understand what you mean. You mean to say if we had a 2100 square foot house why is it not a detriment? Mr. Greenup knows the detail of the neighborhood much better than I, but that structure in its height and so on would be wholly consistent with the neighborhood as it exists. There are many structures directly abutting by law that are bigger, several structures that are bigger. There's one for which you granted a Special Permit that is visible from Mr. Greenup's house, though not on the same street, it's -- I've forgotten the name of the street. John, would you help me?

JOHN GREENUP: Bradbury. 32

Bradbury.

ATTORNEY SHAW MCDERMOTT: In which you allowed an enlargement which you allowed considerably bigger than this one, and it's right in back of the house across the street. Mr. Greenup can give you the detail on it, but it would not be a structure that's not substantially larger than anything else in the neighborhood. So, therefore, it would not be a detriment to the neighborhood. The appearance of the neighborhood visually or frankly historically because we intend to do it with the same exact kind of materials that the Historical Commission had anticipated Mr. Ellsworth was won prizes from the City of Cambridge for his sensitive renovations that he's done in historical areas who is here to ensure that all those aesthetic considerations will be honored as well.

So, I don't think it would be -- there

would be substantial detriment to the public good which I think is the one way of phrasing the statutory requirement. And I think the Board has previously indicated that in their findings in regard to the previously issued variance, that there would be no substantial detriment of the enlargement of the house. That's the second reason. I mean, you've already in a sense have already made that factual determination.

CONSTANTINE ALEXANDER: The Section 6 test of Chapter 40-A is that we have to make a -- we have to grant a Special Permit that finds that the change, the addition of the work to be done would not be substantially more detrimental than the existing nonconforming structure to the neighborhood. But we've identified that this larger house, it seems me as I read Section 6, is 2100 square foot house would not be substantially detrimental than the old 1200 square foot

house to the neighborhood.

ATTORNEY SHAW MCDERMOTT: You know, I can appreciate that. If this were retracing, you might want to make that determination in those words. In effect you already did that by the issues of the original variance which says that the desirable relief could be without the substantial detriment to the public good. That's the phrasing you've reached in the last decision. In a way you've already reached that factual thing. But I think to bring it up to date, I think the factual premises are actually the same as before. That we tend to do something that is not to repeat too much but is consistent with the neighborhood appearance and the size of adjacent dwellings and indeed consistent and of course consistent with the aesthetic appearance but also further consistent with something we've done quite recently with respect to 32 Bradbury Street just adjacent

to Mr. Greenup's premises.

TAD HEUER: So which of these three options could be before us comparing the 1260 to no greater non-conformity than a 1260? 1260 to no greater than non-conformity of 2100? Because under your recommendation, as I understand it, the variance is granted and is optimal to the house pertinent to those. Or 2100 as compared to 2100 because we should presume that the variances folded into the house as, you know, unconstructed and then reconstructed and that we're looking at 2100 as you are initial previously non-conforming structure and that's what you're comparing it to? Do you have thoughts on which of those three scenarios all of which, some of which are either before us or do you have a preference as to which one we would grant?

ATTORNEY SHAW MCDERMOTT: Right. Well, again, not to interject too much simplicity where there is a complexity, I do

think that the current circumstances are that the Board has granted the relief again without any appeal that would have been taken for the 900 square foot addition. And the previously the city has granted permits to rehabilitate the 1200 square foot portion. The controversy arose because of what Mr. Curtis and his team did in connection with the rehabilitation. And so we thought the more appropriate way is to come before this Board with, you know, to assist the Cambridge city officials in having you review the situation. I do think that the rehabilitation of the 1200 square foot house is really the issue before this Board tonight because --

CONSTANTINE ALEXANDER: You're saying it's 1200 -- to answer Tad's question 1200 to 1200.

ATTORNEY SHAW MCDERMOTT: Right. Well, that's because that's what we applied

for. I do think, though, that beyond that, I don't want to leave a microphone unattended before I say this looked at as a whole in practical terms that approval of the 1200 square foot rehabilitation when matched with your other approval, you would be well within your bounds to make a factual determination that the ensuing combination of the two was also, also met the test as a test. You've said so already in the earlier finding different wording slightly in the statute but essentially that. And for the reasons given it does meet the test. But if you're asking me what is on the -- before the house tonight in technical terms I think all that we ask for is that determination with respect to reconstruction, rehabilitation of the original 1200 square feet. And that's all we ask for I think.

CONSTANTINE ALEXANDER: One further question along those lines. If we were to

find that you do what's going on does increase the nonconformity.

ATTORNEY SHAW MCDERMOTT: Yes.

CONSTANTINE ALEXANDER: I.E. you're not within the second quote of Section 6. Do we ever get the question of substantial detriment today? We have to -- can we find yes, there is an increasing nonconformance but we'll still grant you a Special Permit because you're not a substantial detriment to the neighborhood? Is that your position?

ATTORNEY SHAW MCDERMOTT: Yes. We don't think you have to reach that, but we do believe that it would meet tests of the Special Permit provisions of the city of Cambridge code. Excuse me one second.

Yeah -- no, I was going to say that, I don't think I can be any clearer in saying that I don't believe that this increases the nonconformity.

CONSTANTINE ALEXANDER: I know

that. I realize that.

ATTORNEY SHAW MCDERMOTT: I know you were intending to sort of.

CONSTANTINE ALEXANDER: I wasn't trying to get you to admit that.

ATTORNEY SHAW MCDERMOTT: No, but I don't believe it does actually because for reasons stated without repetition.

CONSTANTINE ALEXANDER: I'm sorry, go ahead.

ATTORNEY SHAW MCDERMOTT: I want to answer the Board's questions. I mean, it's a little bit of a Rubik's cube as you see, but the truth of it is that you have said already that the larger structure with the addition would be, you know, would not be a detriment to the public good which is almost equivalent to statutory language, saying not quite but it's equivalent of it, made that finding. And what we would like to do is to appropriately and under careful supervision

of all city officials with Mr. William's talents as both an engineer and now a law student at Suffolk Law School to be very precise and careful to meet every single inch by inch requirement that comes up that we just want to reconstruct that thing in an appropriate way so that it really brings it back to the way it was. Did you want to --

CONSTANTINE ALEXANDER: Do you want to add anything or questions from members of the Board?

JOHN GREENUP: I'd just like to add two items here. As you know, there's been some question with the Marsh Half Crown District. I think you'll find the letter here from --

CONSTANTINE ALEXANDER: We have that in the file and I'll read it into the record at the appropriate time.

JOHN GREENUP: And also there's a letter here from Ranjit.

CONSTANTINE ALEXANDER: That will also be read in the record. We have that as well.

Questions from members of the Board before we open it to public testimony? No questions.

Anyone here wishing to be heard on this matter.

FEMALE: Yes.

CONSTANTINE ALEXANDER: Who wants to go first? Mr. Rafferty.

BRENDAN SULLIVAN: Mr. McDermott, the structure or focus of 1200 and how many fee.

JOHN GREENUP: I believe it was 1270, 1260.

ATTORNEY SHAW MCDERMOTT: 1270.

BRENDAN SULLIVAN: 1270. And the total was 2193?

ATTORNEY SHAW MCDERMOTT: Yes.

ATTORNEY JAMES RAFFERTY: Good

evening, Mr. Chairman, members of the Board. For the record, James Rafferty. I'm appearing this evening on behalf of practically 15 abutters to the property. Their names and addresses are set forth in the correspondence that I sent to the Board on December 30, 2009 -- Deborah Masterson of 53 Foster Street; George and Mary Lou Kent of Two Foster Place; Melvin and Mary Elizabeth Field of 39 Foster Street; Susan Lockhard and Neil Devine of Five Foster Place; Woody Tucker of 46 Gibson Street; Stuart and Marie Anikshrum (phonetic) of Seven Foster Place; Dorothy Altman of 43 Gibson Street and Ruth Marie Charles (phonetic) of 36 Foster Street.

All of the abutters and the clients that I represent have been following this process very closely for several years and I would just state that picking up on the Board's -- the Chairman's question, I have for the Board a copy of the house that was here

before the work began. It's obviously the image on the right. Now the image on the left is what -- how things have looked. My right. Is that not the right?

CONSTANTINE ALEXANDER: That's your right, it's our left.

ATTORNEY JAMES RAFFERTY: So you get the idea.

CONSTANTINE ALEXANDER: I know. One more time.

ATTORNEY JAMES RAFFERTY: You get the idea.

CONSTANTINE ALEXANDER: That's on our left, your right is the house as it once was?

ATTORNEY JAMES RAFFERTY: Correct. And this is what the neighbors have lived with for two and a half years. Now, there are two things of note here.

First of all, Section 6 of Chapter 40-A a very particular exception for single and

two family homes. A rather narrow exception. What it is, though, it says that certain alterations to those houses can be done without need for zoning relief provided there's a Section 6 finding. And the Section 6 finding is a determination that the structure has no more adverse impact than the prior structure. But in this case, the structure we're talking about here was a 1200 square foot house. There are no plans before you to construct this house. The application doesn't seek under Section 6 to construct it. This was a full walled two-story house of 1200 square feet. And if that's what the applicant was seeking to construct as I noted in my correspondence of November 30th. There would be no basis for an option because Section 6 would clearly provide that opportunity to the applicant.

Now, my clients have endured more than two years of this because the petitioner has

repeatedly asserted here and the Neighborhood Conservation District at the Historical Commission in forum beyond here in the Land Court that a demolition didn't take place. Could never accept the fact that a demolition was here. We've had it characterized that some lumber was moved around. We had a demolition. And the Historical Commission affirmed the finding of the Neighborhood Conservation District and a two year moratorium was put in place. Now more than two years later comes the petitioner under Section 6 which allows for reconstruction of a demolished house and says now I want to avail myself of this petition. Forget the fact I said no demolish for two years it is demolished and I want to start all over.

CONSTANTINE ALEXANDER: So.

ATTORNEY JAMES RAFFERTY: It's gaming the system. Section 6 allows him to

build the house that was there before the square footage and everything else that's contained in it. What he wants to construct by his own admission is a portion of the old house and an addition that was authorized under a variance. Ironically a variance that was granted at 900 plus square foot variance by this Board on the hardship that the structure needed significant foundation work, it sat in the Historic District and it could not be rebuilt. That was the hardship that was presented to you a few years ago. You couldn't take this house down. So he received this Certificate of Appropriateness to restore this house and create an addition. Section 6 -- go ahead.

CONSTANTINE ALEXANDER: I shouldn't talk. Go ahead.

ATTORNEY JAMES RAFFERTY: In essence Section 6 is a special provision that allows for a determination by you that the

house being constructed under Section 6 doesn't have a more adverse impact. Well that, there's no application or plans before you to construct that house. So on its face you can't make a Section 6 finding. The Section 6 case lot is all about -- the vast majority of cases around Section 6 suggests that and the most recent case which the petitioner has cited. What about when you put a conforming addition on a non-conforming structure? Should it be as a matter of right or near certainty that those by their very nature they can't have a more substantial impact because they otherwise conform with zoning. And the case that came out of Edgartown last year said no, the town was entitled to make the Board have the discretion, make the conclusion that notwithstanding the fact that the addition conformed -- that house had a non-conforming front setback -- they could -- it was

appropriate for the building commissioner not to make the automatic determination, and it was appropriate for the Board in that case to say you know what, even though it's a conforming addition and the house would otherwise comply with the zoning, that is what we have here. We don't have a conforming addition. We have an addition that's been authorized by a variance. And while I recognize this is not a hearing about the status of that variance, it is more than relevant to the Section 6 application that there are no plans for a house without that addition.

So, the plans, the application, the dimensional form do not seek to reconstruct a 1200 square foot house. And why is that relevant? Because Section 6 has very limited application. One and two family houses. If this was a commercial building, this building would have endured the fate

that all the nonconforming structures. It comes down you lose it. In this case there's attempt to use Section 6, and for the reasons set forth in our memo, we believe that the reliance of Section 6 is inappropriate and the Board shouldn't grant the relief being requested because you don't have before you an application to build that house. You have an application to build a much larger house, the house nearly twice the house of that house.

CONSTANTINE ALEXANDER: Let me just challenge that a little bit, Mr. Rafferty, or explore it a little bit.

We -- originally it was 1200 square foot house there. They got a variance from our Board to add 900 square feet. So it's going to be a 2100 square foot house there as Mr. McDermott pointed out. That variance was never appealed and become final. And then your predecessor and owner demolished

the structure, the initial structure, not the addition, so the addition couldn't go forward because the demolition of the original structure put a halt to any kind of construction. But if it had gone forward, the structure would be a 21 -- it would be a non-conforming structure 2100 square feet roughly in volume. Shouldn't we, I think Mr. McDermott's point shouldn't we take the variance as if it had been affected, it was finalized. It would have gone forward were it not for other problems and, therefore, shouldn't we be looking at whether a 2100 square foot house is going to be enlarged by what the petitioner is proposing to do tonight? I mean, your position is you -- basically you tried to ignore the variance. Mr. McDermott's position is you take the variance as a given and you do your measurements. You say we measured off the 1200 square foot house. You're going from

1200 to 2100 square foot feet. Section 6 doesn't apply. Mr. McDermott would say it's 2100 feet versus 2100 feet, there is no increase in the non-conformance. How do we resolve that?

ATTORNEY JAMES RAFFERTY: I think your characterization is accurate. I think the difference is, however, Mr. McDermott is telling you pay no attention to the addition. You need only focus on the original house. I'm saying something very differently. You can't ignore the addition. I'm not asking you to ignore the addition.

Now what's the role of the variance? The role of the variance says that this house is no longer a house that qualifies for Section 6 so that the relief being sought here isn't the appropriate relief. He has to go get a variance for a new house if he wants to build that house because the original element of that house is gone. He doesn't qualify

for Section 6 exception. He's suggesting ignore the addition. I'm saying you can't ignore. That's a separation that the Section 6 doesn't afford in this case.

Now, is there case law on point on this? Not really. And it's a challenge. But what the trail of case law, suggests though, is a very narrow exception for the reconstruction of the house. Now, my clients have a whole range of concerns about the compliance with the conditions of the variance and a whole bunch of other issues. And I've said it's my sense that really isn't an issue before the Board tonight and there are other ways and mechanisms and through enforcement actions through the Building Department they believe that the basement of the house as constructed is larger than what was approved in the variance. That the foundation is currently in place for the addition doesn't conform to the setbacks gained in the variance.

CONSTANTINE ALEXANDER: If that's the case, even if we grant relief tonight, your clients tonight can challenge the project going forward.

ATTORNEY JAMES RAFFERTY: I agree completely. People who want to hear me go on and on on those issues tonight might be disappointed because I don't think that's the place to do this. But it's also my way of figuring with my brother and his client, for the longest time now, I believe there should be an opportunity to resolve this or come up with something that might work and end this process. This process has gone on a long, long time. And I imagine Mr. McDermott and his client have a different view about what has caused the amount of time here than my clients do. But having said all that, I don't think and I don't think the case law supports a Section 6 finding here. I think there are other avenues available for which

my clients would work with the petitioner to achieve.

CONSTANTINE ALEXANDER: I'm going to ask all of you a question. Have you had these discussions? Have you attempted to work these out?

FEMALE AUDIENCE MEMBER: Yes.

MALE AUDIENCE MEMBER: Yes.

CONSTANTINE ALEXANDER: Let the people at the table answer.

FEMALE AUDIENCE MEMBER: Yes.

ATTORNEY SHAW MCDERMOTT:

Mr. Greenup put up a website and invited the neighbors to make comments. Am I correct, John? And you correct me if any tad of this is wrong. And opened the opportunity for discussion. The difficulty to be very straight forward with you, at various times I've heard 18 voices. I've heard rumors of different perspectives. And I have not heard expressed even to this moment, and I

don't expect it is achievable to have one voice speak on this topic, there have been suggestions made at various times that the better course would be to have a contemporary house rather than his horrific house there. Suggestions made that the house be made smaller by a factor but that factor differs depending upon who you talk. There's question about heights and so on. It's not achievable in my judgment. And Mr. Greenup made himself open and available for that discussion. But I don't think we ought to get into that tonight to be honest with you.

CONSTANTINE ALEXANDER: I do want to get into.

ATTORNEY SHAW MCDERMOTT: May I also have a moment to respond to some of what Mr. Rafferty said?

CONSTANTINE ALEXANDER: Before you do. Do you concur with his characterization of not speaking with the neighborhood not

speaking?

ATTORNEY JAMES RAFFERTY: I couldn't disagree more vigorously.

CONSTANTINE ALEXANDER: Please, let Mr. Rafferty answer.

ATTORNEY JAMES RAFFERTY: I won't recount the attempts to -- but at any rate, anticipating that may be an issue and I did, it was recently, I did send a communication, it was only today, saying I've got everyone in agreement. There's a footprint people could live with. You've got a very talented architect. We could work out a lot of things. I attempted to do this months ago and there wasn't a willingness. The response I got.

ATTORNEY SHAW MCDERMOTT: I disagree.

ATTORNEY JAMES RAFFERTY: Okay. Mr. Greenup was in my office and I suggested to him -- I applauded his hiring of

Mr. Ellsworth. And I said, you know, if you like to sit down and work something out. And to quote Mr. Greenup and now to be a law student, you know, Jim, I think we'll let the guys in black robes decide. And I said to Mr. Greenup you could be very unhappy with these black robe men and women. I'm here and I represent people and they're willing to talk and that's our position as of tonight.

CONSTANTINE ALEXANDER: The reason I raise this and I'm going to let you respond to Mr. Rafferty's comment, I haven't forgotten that --

ATTORNEY SHAW MCDERMOTT: Thank you.

CONSTANTINE ALEXANDER: The point is that we tend to encourage when there's a controversial project in the neighborhood, we like the neighborhoods to get together and come up with an applicable solution. What you're hearing tonight is if you really want

to go forward and if we were to grant you the relief you're seeking, you're still going to want to find yourself in court in a couple of more years are going to run by before you get the case resolved. Is there any reason not to continue this case and to sit down with Mr. Rafferty for another -- and come back to us and see if you can resolve it? Because if you can, this case will come to an end. We don't need to have another jaundice versus jaundice here.

ATTORNEY SHAW MCDERMOTT: I do have a comment. It is simply this: That we've been at this in a way inviting any discussion for a long period of time. We've taken a perspective on what occurred there from a legal standpoint and thankfully we've had some validation of that perspective. Although it has not been one that has been erased by the City of Cambridge, the boards we've had validation of a knowledgeable

person of that perspective without being too coy about it. A person that you would know to be a highly intelligent gifted one of the most important Scribners of legal opinions in this subject area has validated our perspective of what the legal rights are here. Put that aside for a second.

Mr. Greenup has been open to this but to -- I don't want to create more controversy. That is not my point. But, you know, I will say this very bluntly, for somebody to send a letter this afternoon in a much continued hearing on a hand sketch when we have as recently as weeks -- last week with exquisite detail gone over actual plans with one of the two direct neighbors Mr. Kent, going inch by inch to assure that the surveys were correct which he agrees is the case now and that the siting of the house is correct in the terms of the survey, in terms of setback and having put all that effort in which actually is sort

of at peace with all the effort that's been put in on the communication of the subject, and then to it suggested by hand sketched plan hours before this hearing that the way to resolve this is by us talking some more, I think the better course frankly is to resolve this issue appropriately tonight and then let's see what happens. That is the way to do it, not the other way around.

CONSTANTINE ALEXANDER: I've -- I just want it on the record that we encourage you to sit down with the neighbors and try to work things out. And if you choose not to, that's your right. Fine. You don't have to defend it. Let's move on.

ATTORNEY SHAW MCDERMOTT: We have done it is the answer. We've done it.

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, let's be clear, no one has ever sat with me. I made an explicit invitation and it was rejected.

CONSTANTINE ALEXANDER: That's not to resolve the case tonight. Let's work out something to the benefit of the community. You wanted to respond to Mr. Rafferty's comment and I cut you off.

ATTORNEY SHAW MCDERMOTT: Thank you. I appreciate it. Acknowledging that this is, that the law Chapter 40-A, Section 6, you know, with the exemption clause is not a model clarity the SJC has told us in two cases. We acknowledge that Mr. Rafferty has got it a little mixed up with all deference to him because he's a very talented lawyer obviously. If this question were just -- with regard to 1200 square foot house, could Mr. Greenup or his predecessor take this and reconstruct the house without intensifying the nonconformity? That is to say build a structure in place of the one there that was the same dimensions and same cube and the same footprint. The answer is

you wouldn't need zoning relief under Chapter 40-A, Section 6. No finding would have to be made. That's what the statute says. That's the exemption.

ATTORNEY JAMES RAFFERTY: You're wrong. The building Commissioner would give you a Section 6 finding not the Board.

CONSTANTINE ALEXANDER:
Mr. Rafferty, let him finish.

ATTORNEY SHAW MCDERMOTT: That's the exemptions and that's what the courts have told us in the last two cases.

CONSTANTINE ALEXANDER: I have the cases here. I've read the cases. I'm well aware of the cases.

ATTORNEY SHAW MCDERMOTT: It's indicative in the cases. Judge Green's decision has it in pretty clear terms.

CONSTANTINE ALEXANDER: I'm sorry.

ATTORNEY SHAW MCDERMOTT: So my point only being that we come before you --

CONSTANTINE ALEXANDER: You've presented your case.

ATTORNEY SHAW MCDERMOTT: Section 40-A, Section 6 -- that's what I'm saying. We're entitled to exercise our right to get a Building Permit without zoning relief. However with some solitude for the City of Cambridge where actually here in the alternative says if you wish to issue a Special Permit and make the finding related to that which is reviewable, you know, in court, we will, we will -- we made that alternative available to the Board is my pointed.

CONSTANTINE ALEXANDER: I'm sorry.

ATTORNEY JAMES RAFFERTY: I'm just saying we're saying the same thing but you know I probably brings being the notion that I don't know what I'm talking about. The Building Commissioner can issue a building permit to reconstruct this house based on the

authority contained in Section 6. He doesn't need zoning relief. It's only with the Building Commissioner concludes that a finding is necessary then it then has to go to the permit granting authority.

CONSTANTINE ALEXANDER: I think you're right.

ATTORNEY JAMES RAFFERTY:

Once -- because we're talking a nonconforming structure. So we're not saying something different as to what Section 6 allows. And if that were the case, I wonder why he doesn't have a Building Permit from the Commissioner and isn't out there building today? He's apparently -- I don't mean to personalize this the applicant is apparently decided to stop by here and have a visit with you people because he could go and get his Building Permit under Section 6 anyhow but this is some courtesy call to the Board absurd.

ATTORNEY SHAW MCDERMOTT: As a

matter of fact, we do have -- no, I want to be clear we have several building permits that have not been -- that have not been revoked.

CONSTANTINE ALEXANDER: Any additional comments, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: No, thank you.

ATTORNEY SHAW MCDERMOTT: There are building permits.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard?

DEBORAH MASTERSON: Yes.

CONSTANTINE ALEXANDER: Please come forward and give your name and address to the stenographer. Ma'am, if you want to pull up a chair, it's up to you.

DEBORAH MASTERSON: I'm going to stand. Deborah, D-e-b-o-r-a-h Masterson, M-a-s-t-e-r-s-o-n and I live at 53 Foster Street. I live on the other corner opposite

Mr. Greenup's house. And so what I'd like to share with you is that I've lived on Foster Street now for a little over six years, and in fact I renovated my house. I came before you to get zoning relief. And we live in a very tiny, very close, very proximate neighborhood. And we're people who like to get along with one another. Counting my house and Mr. Greenup's house and the six houses that are on Foster Place, there are eight houses. And I want you to know that over the past six years, three of those eight houses have been renovated and have had small additions put on, not including Mr. Greenup's house tonight. There's never been any problem. We've been very supportive of one another and the houses all turned out quite nice. So I would say that our neighborhood is one of mutual respect, neighborliness and support for one another. And in short we get along and we like it that

way. We'd like to continue to get along. We're a living example, I feel, of what life in a small neighborhood can be like and how it works. And there's been no history of oppositional behavior on the part of any of us.

When Matthew Curtis who is the predecessor of Mr. Greenup originally approached all of us in our neighborhood about his plan for the large house and design, a few of the neighbors were shown a model, and you may have heard this. I wasn't, but people will speak to you about this, that had the addition that actually could move. And so the model that the neighborhood was shown was actually much smaller than what was presented to the Marsh Neighborhood District Commission. And in fact, when I attended the meeting in November of '06 at the Marsh, there were no dimensions on the plans. I was really not sure what the dimensions were.

And frankly, I think it's hard as a person who's not skilled in plans, to know what a house is gonna look like when you see an eight and a half by eleven photocopy of a house. And when you actually see it, it's quite different than what you see it on a piece of paper especially with no dimensions and no setbacks. And so we all supported it, and frankly now we all felt like we were misled because the house is much larger than anybody thought it would be. Much larger than the model. So, I would say that we really didn't understand the full scope, the impact or the mass of the house.

CONSTANTINE ALEXANDER: Can I just interrupt you for a second? When they went for the variance, the first variance, you all got notice and the files showed that what Mr. Curtis wanted to do was put on another 900 foot addition, two-story 900 foot addition. So you were at that time, I mean, you were put

on notice. You had the ability to find out exactly how big the new structure was going to be.

DEBORAH MASTERSON: That will be addressed by one of the other neighbors.

CONSTANTINE ALEXANDER: Okay.

DEBORAH MASTERSON: In October of '07 when the stop work order issued, you know, I think there's this issue of whether the house was demolished or not. And we have always taken the position that the house was voluntary demolished. Theresa's house that you see there in the picture, it's gone. It's never coming back. And for Mr. Greenup to say it wasn't demolished and all of a sudden to come and say it has been demolished is quite a 180. And so I guess where I'm going with this, it's led us all to not have a lot of confidence in Mr. Greenup in the proposals that he's made, and you'll hear more about the numbers that we thought were

one thing and we thought were changed and issues with the basement. So, we're reasonable people and we have -- and you'll hear this from all of us, attempted very hard over the past two and a half years to come to an agreement with Mr. Greenup. In fact, we even went to the lengths of having one of our neighbors who is an interior designer come up with two plans that were substantially larger than Theresa's old house, is 120 square foot house but a little bit smaller than a 99 square foot house and we could have lived with that. We came up with another plan that was shared. I mean, we have been amendable and I will say that we have never been approached by Shaw McDermott not ever, not once to talk, which I find remarkable being the fact that, I mean, if you want to try to settling, it's not just on Mr. Rafferty's position to do that it's a two way street. So I find that to be an important thing to think about.

So, if you decide that you're not buying into our position that Section 6 is inappropriate and you feel that the Section 6 is appropriate, I would like to say that I think it totally presents a substantial detriment to the neighborhood. I don't see how 1200 feet that becomes 2199 square feet is not a substantial detriment. And it totally intensifies the nonconformity. I mean, the look-throughs that we used to have, it was a small rectangular house with a detached garage with a garden on the side. All of those things are gone. The shadows are different. The look-throughs are different. It's -- I mean, I care about my little neighborhood and I don't want a huge mansion next-door. And for you to decide tonight just based on the fact that you only want to look at the 1200 square foot house and not take into consideration the whole 2199 square foot house, it's like ignoring the

elephant in the room. If he wants to build that old house, then he needs to rip down the addition because there's no way he's going to be able to finish that outside wall with the addition the way it is now. It's adhered to the rectangular house. So, I guess I just like to leave you with the fact that I want you to deny his request for a Special Permit, and I know that at least I've heard a lot that people feel that we haven't been reasonable and I really think that that's totally not true.

CONSTANTINE ALEXANDER: Thank you.
Thank you.

BRENDAN SULLIVAN: Is the folder there for the original petition?

CONSTANTINE ALEXANDER: I have a question for you, Mr. Rafferty, but at the end of the comments.

ATTORNEY SHAW MCDERMOTT: I do want to indicate one thing that the number is and

I responded incorrectly to Mr. Sullivan. I said 2193, the proposal was 2199. I think the last speaker is correct.

CONSTANTINE ALEXANDER: According to your dimensional form, you've reduced the size of the structure by six feet, 2199?

ATTORNEY SHAW MCDERMOTT: That's right. I wanted to correct what I said to Mr. Sullivan. He asked if the original project was 2193? And I said yes. The original project was 2199. We proposed to reduce it.

CONSTANTINE ALEXANDER: That's in the file.

ATTORNEY SHAW MCDERMOTT: I just wanted to be clear.

MARY ELIZABETH FIELD: My name is Mary Elizabeth Field and I live at 39 Foster Street. And my husband Doctor Field and myself are direct abutters, considered direct abutters. So this does impact me very

much. So, and I really came tonight -- first of all, I've been to meetings where we've had Mr. Greenup and his wife. We've been accosted on the street whether we would have talk to Mr. Greenup. There have been, many let's say, off the record encounters. So I'd like to put the record in place, and I know as Deb said, we were very -- and as my children say naive. We were very naive as to figures and how they've been changed and they're kind of kicking -- I'm kicking myself right now. And so what I have brought with me -- I am an enabler I hope. I have brought two photos because the photo says more than a thousand words. Now, looking at this house you had shown the larger house. The original house. This is the front of it. Now these are the side-views.

CONSTANTINE ALEXANDER: By your right and my left is a side-view of the house before --

MARY ELIZABETH FIELD: Before. And I think it's very obvious if you look at them, that this is -- this will definitely show that it is has gotten much larger, much denser.

CONSTANTINE ALEXANDER: No question about that. That's the variance granted for the extra 900 feet by definition is going make a larger structure.

MARY ELIZABETH FIELD: Excuse me.

CONSTANTINE ALEXANDER: Sure.

MARY ELIZABETH FIELD: Well, you know -- when he has to build his house -- when this house is supposed to be built, is it -- does he have to get a Certificate of Correctness? A Certificate of Appropriateness?

ATTORNEY JAMES RAFFERTY: That's from the Historical Commission. That's not for this Board.

MARY ELIZABETH FIELD: No, no. But he does have to get -- he has to get a

Certificate of Appropriateness.

CONSTANTINE ALEXANDER: He did get it.

MARY ELIZABETH FIELD: He didn't. I'm sorry.

CONSTANTINE ALEXANDER: Well, we have something in the file that says he did. That's the reason -- I don't mean to argue with you, but....

ATTORNEY JAMES RAFFERTY: I think the issue about its relevance is not -- I don't mean to interrupt, it's not really -- for purposes of it exists based on Mr. Sullivan's thing. It could be other proceedings regarding the validity of the certificate, but I'm trying to say that's not before this Board.

MARY ELIZABETH FIELD: Oh, okay. I just want to show you that if it is a non-conforming lot to begin with, you -- and you're going to build anything on the lot, I

would think that you would have to get something that would be very conforming to the non-conformance to make it as little -- as much land possible to show. And you can't -- you're gonna vote on a house tonight that is you say the original house or it's supposed to be. It's taking the place of the original house. And you're also saying that you're putting the addition on it, the addition goes with it because he's got -- been approved. Now, it's also from the Section A that we're talking about -- Section 6 that you were all talking about, this addition has to be pushed up to the house.

Now, before there was a house and there was the garage which was further away from the house, so therefore there was more land showing, clearing. So what you have is this big addition placed up against this big house, you're gonna take up all your land. And that's what I really want to say.

CONSTANTINE ALEXANDER: Thank you.

MARY ELIZABETH FIELD: And I hope you look at my pictures. And I hope that you can realize that my logic is not too much density. Okay?

CONSTANTINE ALEXANDER: Thank you very much.

MARY ELIZABETH FIELD: You're very welcome.

CONSTANTINE ALEXANDER: You know, I have to make an observation. You would think, I would think -- I've seen this structure in its current condition and it's been for the last two years. My first reaction, I would think the neighborhood would want anything other than what's there now. They don't. There's obviously very strong passions about it.

MALE AUDIENCE MEMBER: We're not building the house that's the problem.

CONSTANTINE ALEXANDER: Please.

It's just an observation. I guess the depth of feelings here that you'd rather have this here for another two years rather than allow the structure that Mr. Greenup wants. Just -- I'm amazed. I guess I'm simply amazed. Anyway. Come forward.

GEORGE KENT: My name is George Kent. I live at Two Foster Place which is immediately adjacent to 45 Foster Street.

To your comment about you're amazed that we would live with that, what we don't want is what's there which is only partially there to get any bigger than it is. It's already too big. And yes, we are quite willing to have what's there a little bit longer on the scale of the rest of our lives than to have the completion of what's there be there for the rest of our lives.

CONSTANTINE ALEXANDER: Well, put well put.

GEORGE KENT: That's the reason

there's passion. My thunder that has been prepared has taken by Mr. Rafferty and Mr. Heuer who is really what is the existing condition. I would comment on the existing condition again by placing those existing conditions, what was approved essentially with a few modifications in the original case on the dimensional forms as existing conditions now. There is for me as a mathematician a logical problem that we're listing as an existing conditions things which never have existed. They were approved at one time, but what has been built on that site was not built according to the plans which the previous owner admitted. And he told us in November of 2007 that he agreed that he was going to rip down every piece of carpentry on the site and start over and build according to the plans. So there's no question in his mind at that point that what was built wasn't there. So, what's

listed as existing conditions hasn't existed. That's a logical problem I have. Maybe it fits in your world. I am very glad that after over two years of coming to these meetings I can talk, because I have listened over that two years, and Mr. McDermott making a number of inaccurate comments and not been allowed to point them out.

I have a question for you,
Mr. McDermott.

CONSTANTINE ALEXANDER: I'm sorry,
we don't --

ATTORNEY JAMES RAFFERTY: Just
address the Chair.

GEORGE KENT: Okay.

The first comment he made was that there is a directly abutting house which is bigger than the 2199 square feet. Maybe he has a different view of directly abutting than I do, but there are only two houses which share a boundary with 45 Foster Street.

CONSTANTINE ALEXANDER: It's a corner lot.

GEORGE KENT: I live at Two Foster Place. My house is 1570 square feet. The Fields live at 39 Foster Street. I'm not sure of an accurate BZA measurement, but it's just over 1800 square feet according to the Assessor's database, and I don't think that's 400 square feet off. So his statement that a directly abutting house is bigger, is just not correct. It's something said for effect regardless of whether it really is there.

The second statement is there's 18 voices, Mr. Greenup doesn't know who's talking. First meeting we had there was a lot of contention and he sat with us and he complained that he heard lots of different people making things, different comments. We have been consistent since then of having small groups meet with him, go back and talk to the big group. We hashed it out in the big

group without him there and we have provided him one voice. So except for that very first meeting where much of the contention came because he followed what his attorney had said to the Historic Commission three weeks earlier, that Mr. Greenup would not go to a meeting at which he would be asked to reduce the size of the house. He said he had suggestions for coming to a compromise. We got into the meeting, he was not talking compromise. We spent most of the time trying to get him to actually have a give and take, he didn't. And that has happened in many other of the meetings. The neighbors would not talk with 18 voices. They have gotten a position and provided it to him.

Mr. McDermott then said that Mr. Kent, being me, had gone all over the plans and agreed that the survey was accurate and agreed with the plans that were presented. I have never said the survey was accurate. I

said I did not have any information that would call the survey into question. I do not have the ability to make a judgment of whether it is accurate or not. Mr. Greenup came back and pushed and asked was I going to challenge the survey tonight? I told him no, because I have no basis. That is not what Mr. McDermott said. He said, I agreed it was accurate and that is not true. He then said that I went carefully over the plans and I agreed with the plans that they were proper plans. Again, I very carefully worded my statement to Mr. Greenup to say what I believed. And while I initiated the discussion on those plans which I got from the city, didn't hear from Mr. Greenup or anybody else on his side, because I looked at them and they were logically inconsistent. The different pieces didn't fit. And so we went back and forth and back and forth and back and forth. And after all of those things, you

have what is presented to you tonight. And what I told Mr. Greenup was I agreed that the thing was now consistent so it told a story. And if from talking to him I believed that it represented what he intended to do, I never said that I agreed that that's what ought to be built there. And I also specifically said we had a philosophical difference because I don't think it's reasonable for the plans to show what would have been a theoretical size of the old house except for the fact that it extends by the new survey on the city property and therefore it has to be lapped off. I said fine, the first sheet shows that. I think the plan view and the other things that talk about what construction would be like show the dimensions that are going to be constructed, and I told him that was a disagreement between the two of us. It's philosophical. I accepted that it's his decision to do that. That is not the way

Mr. McDermott characterized what I said about those plans. And I resent that he stands up and puts words in my house to what he wants to project and has no regard for what I have actually said.

CONSTANTINE ALEXANDER: Thank you.

GEORGE KENT: I just would like to say there are problems mentioned by the others; Mr. Rafferty, other neighbors, and I strongly agree with them that it is not logical at this point to grant the relief which Mr. Greenup has requested. And I also further, the fact that Mr. Rafferty said we remain committed to coming to an agreement such as you suggested earlier, talks with Mr. Greenup, he said, actually before he bought the house, he told me that he could accept some of the gross floor area being in the basement. We're happy. What we're concerned about is what's above ground. An adjustment that would put things in the

basement, that's fine. If the above ground is a reasonable size for the neighborhood, we have over and over said we don't care about the amount that's underground. But that has not gotten us anywhere.

CONSTANTINE ALEXANDER: Thank you, Mr. Kent.

NEIL LEVINE: My name is Neil Levine and I'm going to make this briefer than it was because I know the time is going.

My name is Neil Levine and I've lived at Five Foster Place for over 30 years, and I'm a director abutter of 45 Foster Street. I'm also an architect historian. My wife Susan Lockhardt joins me in this statement. We strongly object to Mr. Greenup's petition for a Special Permit or any other zoning relief he might request to reconstruct the non-conformity portion of the 2200 single-family dwelling at 45 Foster Street. We do so on the grounds that it would

negatively impact the neighborhood by greatly intensifying existing non-conformities bringing total FAR of the project to completely incongruence from the zoning ordinance purpose to prevent the overcrowding and overbuilding of land. And in the process greatly unique integrity of our neighborhood consisting of very modestly sized 1970 workers' cottages. And I should add that our neighborhood for us is Foster Place. Bradbury Court has nothing to do with our neighborhood. And the average size of house in our neighborhood is about 1400 square feet.

To grant this permit would therefore be a serious detriment to the public interest and tear at the heart of our local community as Deb Masterson has pointed out. In which the applicant has found no supporters over the past two years and only vigorous sustained opposition. Over that period of

time I should add we have all tried many times to negotiate some form of compromise with them and are still willing to only to be rebuffed and stonewalled at every turn. I'll leave out this whole question about the elephant in the room.

As an instrument of public policy, and this comes out of my own thinking. As an instrument of public policy, zoning has a major role in shaping the relationship between private interests and public good in our city. As elsewhere in this country since the concept was first introduced in New York City in its landmark zoning resolution of 1916 about which -- the fundamental condition of zoning is the limitation placed on private interests in the light of overriding communities. Mr. Greenup has made his entire case around selfish purposes, never once as far as I or others of the neighbors have heard, referring to the Foster Place

context and the possible adverse impact his own needs and his own desire for X amount of space -- sorry. His adverse impact his project would have on it. All he has ever talked about to us are his own needs and his own desire for X amount of space to meet those needs. We look to you there to defend the rights of the community and the public interest in rejecting this petition that runs completely counter to the main principle of zoning. As Mr. Greenup himself told us, he would be more than willing to see both the Cambridge Historical Commission which he called to us the Cambridge hysterical commission, and the Board of Zoning Appeal forced by his legal maneuvers to buckle under to his personal demands and thereby lose any future credibility to do what you and they are entrusted to do.

Before I stop, I'll just like to reiterate what has been said that we would be

more than willing to discuss an appropriate, and I use that word appropriately in this case, an appropriate solution to the problem of building a house on the street where the average size is about 1400 square feet. So thank you.

CONSTANTINE ALEXANDER: Thank you.

MARY LOUISE KENT: I'm Mary Louise Kent. I live at Two Foster Place and that's directly next to the property known as 45 Foster Street. I've been waiting for two years to speak to this Board while the petitioner and his lawyer were allowed again and again to make remarks before asking for yet another continuation, the neighbors were never given a chance to speak before tonight. I believe it's important for you to understand a very brief history of the relationship of the neighbors. Deb touched on that and Neil has, too.

Matthew Curtis purchased the property

from the estate of Theresa Gardari (phonetic) in 2006 and started to plan a renovation. He invited neighbors to his house at 50 Foster Street, a property he had renovated very nicely right across the street, and showed us a cardboard model of Theresa's old house with a modest addition slightly bigger than the garage. And he slid it up and down the original house and said well, he hadn't decided quite where it was going to fit on, but it has a roof that sloped down for below the old ridge pole down towards the ground. It looked fine. And we thought it was great. He didn't explain exactly what the dimensions would be, but why would we worry? The original house was there. We liked Mr. Curtis and we trusted him to do a good job of renovating the house. I never even went to a Neighborhood Conservation District Commission meeting where the submitted architect's drawings still had very few

dimensions on them. When it came time for the first BZA hearing, and this is to answer your question, Mr. Curtis told us it was just pro forma, we didn't have to come. And we said, okay. And so we didn't come. We trusted Mr. Curtis. And we feel deceived and betrayed and we're really upset about it. And I think it's important. People keep saying well why didn't you appeal? Why didn't you make a protest? We didn't understand what was going on. We were naive. We were stupid. And we depended on the professionals to keep an eye on things. So that's what I wanted to say.

When Mr. Greenup bought this property, he had full knowledge of the history. He had a notebook this big. He came and spent three hours in our living room the day before he agreed to buy it. He understood everything, and he was obviously very determined to be able to work the system and make an end run

around regulations that were put in place to protect the neighborhood. I strongly urge and request that this commission deny all three petitions before it concerning 45 Foster Street.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

LENNI WOODY TUCKER: I'm Woody Tucker. Mr. Rafferty has moved me to Gibson Street. I actually live at 46 Foster Street right across the street. And there are a number of people here with me tonight who don't really wish to make personal statements in the interest of brevity but who would like very much -- very much like to express their concern for the resolution of this neighborhood problem and their support for the position that this Special Permit request be denied. And they would like very much if you would allow them just to stand briefly and make themselves known to you if that's all

right.

CONSTANTINE ALEXANDER: That's all right.

LENNI WOODY TUCKER: Okay, everybody who wants to -- do you need names and address?

CONSTANTINE ALEXANDER: No. Let's say approximately 15 people have stood up.

LENNI WOODY TUCKER: Great. If you don't need names and addresses, we'll take our seats and thank you very much for your time.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard?

WILLIAM CHOW: My name is William Chow and I live at 36 Foster Street which is diagonal from the property. I just want to make a simple statement. I'm not a lawyer and I'm not an architect. I'm just a neighbor with some sense of visual acuity. And I will testify and will let you know that

addition definitely is a detriment to the neighborhood aesthetically and in terms -- and the change of flavor of the neighborhood.

CONSTANTINE ALEXANDER: Thank you, Doctor Chow.

Anyone else wishing to be heard?

I have two questions. Not yet but you'll have your chance but not now.

Two questions for you, Mr. Rafferty. One of the big issues in this case obviously from a legal point of view is the effect of this variance, the addition, Mr. McDermott's position is basically that's off the table. The variance is granted. You can go and worry about that anymore. That's a given. I think your position is that's not the case, that you got to look at 1200 square foot house before us and now we're going to have a much bigger house if we're going to allow the project to go forward. And I've also heard

tonight people suggested the plans going forward do not comply with the variance we granted for the 900 square foot addition. You want to, you may be not in a position, would you speak to that?

ATTORNEY JAMES RAFFERTY: Sure.

CONSTANTINE ALEXANDER: If that's the case and there are other issues here, I think it affects how we treat that addition. Because an addition is not the addition we approved if there are problems.

ATTORNEY JAMES RAFFERTY: I would say to the first part, that my position is that the variance disqualifies the application under Section 6 because it will result in a house that doesn't. Not saying that the Board needs to find tonight what the legal status of that variance is, but you can't go under Section 6 seeking a finding that you're building a house that was removed and you're not having any adverse effect.

That's not the house that's being built.

But to your second point, three areas have been brought to the attention to the city officials, and there has been conversation particularly between Mr. Kent and Mr. Greenup with regard to the foundation that was installed by his predecessor. This talk about this survey that was -- there's a long history about the accuracy of the prior survey, and the business and this new survey. I have been informed that the results of that survey show that the footings on that foundation that's in place, particularly as it concerns the setback with the Kent property, are not -- are encroaching. And there had been a conversation well, I will step back the wall of the house, so the wall of the house will be inside the foundation and that will be the cure of that. The issue that clearly has not been addressed is that in the GFA both in the existing conditions set forth

in the original zoning application and in the requested conditions, no GFA was accounted for in the basement because the basement of the existing house had a ceiling height less than seven feet. And the basement of the addition as proposed in the addition had a ceiling height less than seven feet.

Mr. Kent has been in the basement which has now been -- the house has been lifted. The original house has been lifted. I've got some photographs to that effect. And I'm going to approximate the numbers, somewhere between seven-feet three and seven-feet four is the basement heights of the existing house which has a GFA implication. Similarly the basement of the addition if the floor of the addition is going to be consistent with the floor of the main house, would also yield a basement with a ceiling height in excess of seven feet. In both cases that would represent a GFA number in excess of what's

contained in the variance. But I hesitated to turn this hearing into a hearing enforcement. But those are the issues.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: And the third issue is the height of the house, the original house according to the information gleaned by the abutters. The existing house has been placed four inches higher. The roof line of that house is the assertion of the abutters is four inches higher than its predecessor when it wasn't raised. These are all issues that will become the subject of enforcement requests with ISD. So to the Chair's point, it's clear it wouldn't end tonight. What I attempted to do is to get the plans to focus on two things. In my experience GFA doesn't tell the story in an addition like this. The scale is determined by height and setback. I encouraged all 15 of my clients, give me a setback you can live

with. And I suggested that the two people that have the strongest voice in the room are Mr. Kent and Ms. Field. Give me a setback you can live with so I can at least send it to Mr. McDermott unsolicited admittedly at the eleventh hour to say, okay, here is where we can begin. Here are the setbacks they can live with if you care to work with us. We don't want to design your house and you shouldn't want us to. Let's talk about what we can live with by way of setbacks and you come back and show us a house that approximates those setbacks, I bet I can make a deal with my clients. And I said a long time ago if the roles were reversed, I'd be on the phone calling someone on the other side. I'd welcome the fact that they have an attorney. I would say you know what, let's put the passion aside and get this resolved. We haven't done that conversation which is probably why the people had to live two years

with that structure. We have never had that conversation with two years that the case has been before the Board.

CONSTANTINE ALEXANDER: The other question I wanted you to address, is Mr. McDermott made the point of substantial detriment. That we've already decided that issue by granting 900 square foot addition. We had to make a finding obviously for a variance, that there was no substantial detriment. How would you address Mr. McDermott's plan?

ATTORNEY JAMES RAFFERTY: Well, again, I think it goes to the issue on the Section 6 under the standard of the variance there was that finding admittedly. But Section 6 is saying now we can build it. He can't get there under Section 6 because the substantial detriment issue under Section 6 is different. He did get relief for that, there's no question, but it doesn't qualify

for Section 6.

CONSTANTINE ALEXANDER: I got your point. I'm going to close public testimony unless other members of the Board would not like me to.

ATTORNEY SHAW MCDERMOTT: Couple of fact points.

CONSTANTINE ALEXANDER: I'm not cutting you off.

BRENDAN SULLIVAN: I have one question of Mr. Levine. When the request for the variance for the addition was before us, did you review what was proposed at that time?

NEIL LEVINE: It's complicated because I was on the Marsh District Commission.

BRENDAN SULLIVAN: So you did?

NEIL LEVINE: Yes, I do. And I had to recuse myself. I spoke against it.

BRENDAN SULLIVAN: You spoke against the addition?

NEIL LEVINE: At the meeting.

BRENDAN SULLIVAN: But you were aware in total of what was proposed?

NEIL LEVINE: Absolutely. If I can say I did force some changes on the house. Let me make this point, that this has been a long process. The architect originally presented the project that Mr. Greenup is trying to build not as a Foster Place house, but as a Foster Street house. He changed the address of the house to meet the legal issues and moved the front door onto Foster Street so it could justify this larger house. I -- and he had blocked up the door on Foster Place. This was the first house on Foster Place. So I actually forced that to happen. But there was not much neighborhood support at that time, and it's understandable because as you heard, for really going full force on this that's the problem.

CONSTANTINE ALEXANDER: Let me read

into the record, first of all, in no particular order, there is a letter that was -- it's actually addressed to Mr. McDermott from Mr. Rafferty. It's dated January 28th which is today's date. This is a letter that has been referred to by both Mr. Rafferty and Mr. McDermott in their comments, but I want to read it into the record. The letter says: Dear Shaw, I want to be certain that there is not any misunderstanding concerning my clients' position regarding John Greenup's application for a Special Permit approval under General Laws Chapter 40-A, Section 6. As set forth in my correspondence to the Board of Zoning Appeals of November 30, 2009 it is my firm belief that Mr. Greenup is not entitled to such relief since the structure he is proposing to build significantly exceeds the one that he demolished. My clients are planning on attending this

evening's hearing and voicing their strong opposition to the application. The purpose of this correspondence, however, is to make certain that it is understood by you and your client that my clients could support zoning relief that would allow him to reconstruct the original house and an appropriately scaled addition. I'm enclosing for your review a footprint that I asked my clients to prepare that would illustrate an acceptable compromise. Please feel free to contact me if you wish to discuss this matter prior to the BZA hearing.

And there is attached to the letter of the footprint that Mr. Rafferty has eluded to in his oral comments.

There is a memorandum in the file addressed to myself the Chair of the Cambridge Zoning Board of Appeal. It's dated today January 28th. It is from Ranjit Singanayagam, Commissioner of Inspectional

Services referencing this case.

"I have reviewed the file for the above-referenced case and find the document submitted are sufficient for the case to be heard as a Special Permit pursuant to General Laws Chapter 40-A, Section 6 first paragraph and Section 8.22 of the Zoning Ordinance. In order for the request for the Special Permit to issue, the Board must find that the proposed work (not including the addition allowed by the variance) at the pre-existing non-conforming site will not be substantially more detriment to extend the existing non-conforming structure was to the neighborhood. After reviewing the documents submitted, in my opinion, the proposed work on the new house, does not include the addition allowed by variance will conform in material respects of the dimensions of the original single-family structures and will be entirely within its

previously existing footprint and cube for the same pre-existing single-family use. The dimensions of the new structure will comply with setbacks based on the narrowest view of the inconsistent property surveys. So the new structure will be contained within the applicant's property and will not encroach on the city's property along the street. Further, although this is not relevant for purposes of the Special Permit finding, the rear setback for the addition is greater than what was approved by the variance for the addition. For the above reasons I believe that the Board can properly find that the proposed structure will not be substantially more detriment than the existing non-conforming structure was to the neighborhood and thus meets the requirements for the issuance of the request of Special Permit."

And lastly, there is in the file

actually a letter to Ranjit from the Cambridge Historical Commission from Mr. Charles Sullivan the Executive Director. "The Half Crown Marsh NCD Commission's two year moratorium on building activity at 45 Foster Street ended on October 19, 2009. The Historical Commission's practice under the city-wide demolition delay ordinance has been that at the conclusion of a moratorium, the owner may resume construction of the previously permitted building. In the absence of a specific procedure in the NCD ordinance, the staff determined that such previously permitted projects could proceed if it conformed to the design originally approved by NCD Commission. In the case of 45 Foster Street, the proponent has provided corrected drawings dated January 28, 2010 that reflect recent surveys and include dimensions, plans and elevations. These plans conform in all important ways to the

plans approved by the Marsh Neighborhood Conservation District Commission in December 2006, an amendment approved to windows in May 2007. Accordingly, I see no reason to object if the Board decides to grant the petition.

Mr. McDermott. You have an opportunity to briefly --

ATTORNEY SHAW MCDERMOTT: Yes, I will.

First point, whatever words I may have selected, I did not intend to say that Mr. Kent agreed with the proposal Mr. Greenup has on the table. I know he doesn't. That should be clear from his comments. With regard to the efforts Mr. Greenup made to converse with him and to which to show him the siting of the dwelling that would ensue from the construction pursuant to the permits and variances previously granted, he went over things in detail with him and we have e-mails which

confirm Mr. Kent's agreement that he had no basis for objection to certain things. And I don't want to get into a quarrel with him as to the detail of it. Let his e-mail stand.

CONSTANTINE ALEXANDER: That's not before us.

ATTORNEY SHAW MCDERMOTT: It is what it is and I do not wish to put words into his mouth. They are there and you can accept his words.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SHAW MCDERMOTT: As to the comments about abutters, I was using the term in a legal sense not in the proximate, you know, people living next-door sense. And I'm going to ask Mr. Greenup to indicate to you which houses are bigger just for the record in the immediate vicinity of this house.

JOHN GREENUP: One of the houses that is in fact larger is one of the speakers,

Doctor Chow. I'm sorry if I mispronounced it. His house is substantially larger in the existing form as the houses proposed here. The house directly opposite on Foster Street which is 52 and 54 Foster Street is again substantially larger than the house we're talking about here.

CONSTANTINE ALEXANDER: How big are the lots?

JOHN GREENUP: They're approximately the same size.

PEOPLE IN THE AUDIENCE: No.

CONSTANTINE ALEXANDER: Wait a minute, whoever said that. If I hear that again, you're going to be asked to leave. We're going to remain civil here and we're not going to call people names, okay?

Now, let the record show that there is disagreement as to what the lot sizes are of the structures that you've cited as being the same size or larger than the one you want to

build.

JOHN GREENUP: Already there's also a house, I believe, there's 17 Brown, it's larger in floor area and --

CONSTANTINE ALEXANDER: 17 Brown, is that what you would call the neighborhood?

JOHN GREENUP: If you look at it here, it's right here and it's in the sense of a legal abutter, it's the abutters to the abutters. And there's, again, also one at 30, I believe it's 35 Foster Street which may also be 21 Brown that is substantially larger in gross floor area. So there's clearly examples here of houses right in the immediate neighborhood that are abutters or abutters to abutters where they are substantially larger.

There's one other point I'd like to make. I understand the outrage of the neighbors, but I'd like -- I wasn't present at the original meetings when this was all

permitted, so I have to look at the record and the actual minutes of what was said there. And what was said on the record and in reviewing the minutes on both the Half Crown and the Marsh District and this body as well at the variance hearing don't reflect accurately with what was said here. And I'll just take a moment to read to you from the actual stenographer's minutes here of one of the persons who lives at 39 Foster Street Melvin Field. His wife spoke just a minute ago and was complaining about the size of the structure and how close it was to the her lot line. Let me read to you his comments. This is Melvin Field saying: We are the abutters next to the garage. We actually have a garage that's next to that so it doesn't matter how close it gets to the line, it's not interfering. We have a driveway here. So it's not interfering with us at all."

So actually --

CONSTANTINE ALEXANDER: Excuse me, the public testimony has been ended. We're not recognizing you. We're not taking any further comments from the public.

JOHN GREENUP: So no, we're very pleased with what he's doing because the house needs a lot of care.

CONSTANTINE ALEXANDER: I don't want to get into that. It gets into he said or she said.

JOHN GREENUP: I agree with you. I'd like to make a point to the Board that the written records do not reflect their comments. The Board may choose to review that if they so choose, and I was not present but I think -- I would -- at least a simple rebuttal needs to be said and I won't go further than that.

Thank you for your time.

CONSTANTINE ALEXANDER: And for the record, you want us to go for a decision

tonight?

ATTORNEY SHAW MCDERMOTT: Yes,
please.

And we would like to just make clear we are asking the Board to make the determination that there has been no intensification much along the lines of the wording that of Ranjit Singanayagam's memo and therefore we -- if that finding is made as a matter of fact, no zoning relief is needed and you choose to reach that conclusion, that would be acceptable. However, if for reasons indicated by city officials you reviewed that the city code adds an overlay to state statute somehow, you know, elaborates, if you will, on Section 40-A, Section 6 with a view I do not happen to share, but put that aside, it is your view than the issuance of a Special Permit is requested.

Thank you.

CONSTANTINE ALEXANDER: Okay.

Then I think that concludes the presentation of the case. I think it's time for final discussion.

Anyone want to talk about the case?

TIM HUGHES: Sure.

CONSTANTINE ALEXANDER: Tim.

TIM HUGHES: I've -- I'm not a lawyer. I want to say that right off the bat. I've heard five different lawyers talk about 40-A Section 6 and I've heard four and a half different interpretations of it tonight, you know. So I mean I can't base my finding on any one lawyer's opinion about what that says. But what I think you can glean from it is that it's -- the intent of the section in the law is to allow a homeowner to rebuild a house that may have been destroyed or demolished essentially to the form that it was before it was demolished. The other thing that I know is that it's not -- there's

no precedent for this Board to reopen a case about a variance that's already happened. The variance has been granted. It goes with the land. There's nothing we can do about that. I do believe that the petitioner shouldn't have to have the burden of proving a second time that there's no substantial detriment on a variance that's already been granted to the land. I do believe the petitioner has the right to build the plans when the variance was granted, and I do believe the petitioner has the right to build the original house back in the same spot, same footprint and essentially the same size and use as existed previously.

CONSTANTINE ALEXANDER: Thank you. Anyone else wish to comment?

BRENDAN SULLIVAN: Well, earlier today Tad proposed three scenarios, one, two and three. And I think either one or three.

CONSTANTINE ALEXANDER: Let me

just -- I'm sorry to interrupt you. You're talking about Tad making that proposal. We weren't discussing the case. We were in Executive Session.

TAD HEUER: No, no, here.

CONSTANTINE ALEXANDER: I didn't want any suggestions --

BRENDAN SULLIVAN: Earlier meaning an hour and a half ago, two hours ago or something. That there were three scenarios that we were discussing, either one, two or three. Either one or three would be acceptable to me. We're talking about 1270 square foot structure, or with the variance it now becomes a legal 2193 foot structure. And that Tim is absolutely correct that if the neighbors are not happy with the addition that they due diligence that's required of them at that time. Mr. Levine was very involved in the whole process being on the commission so that that now is a legal

structure by way of the variance. Or at any rate I do agree with Tim that I think the petitioner does have a right to rebuild that front portion of structure again whether we call that 1270 square feet or 2193.

CONSTANTINE ALEXANDER: Anyone else?

SLATER ANDERSON: I concur with both of your thoughts. A lot of what I heard tonight is frustration about an already granted variance which we can't address. The plan Mr. Rafferty has brought shows the existing house being rebuilt in its existing form. I think that the law that's been cited, and it is our responsibility here, is to allow to focus on what was the house, not the variance. Not what -- and unfortunately the variance, however the message wasn't communicated to the neighbors at the time, the variance is what troubles people, the massing of that portion of the house, but

we're not here to speak about that. But what we're here to address is the reconstruction of the original house. And the various opinions expressed on that legally I think argue for the homeowner's right to rebuild the house.

CONSTANTINE ALEXANDER: You speak or I'll speak.

TAD HEUER: I think I generally concur, but I think I would restrain to either situation one or two and not three. So looking at this as just being the reconstruction of the existing house or potentially more troubling to me which is why I raised it, reconstruction of the house versus reconstruction of the house plus the variance addition. And the reason that troubles me just a little bit, and I'm not sure it's enough to sway me towards saying that's the only course. I could be persuaded that's only about 1270 and not 1270 issue

tonight. Is that while a variance does run the with the land, I believe the variance, when it was granted, it was also for FAR; is that right? The original variance? Yeah. And I presume it's -- the variance structure was built only as a freestanding structure and there was no other house there, there would be no FAR problem, is that also correct?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: So 900 square feet would not trigger an FAR problem on that lot I presume.

ATTORNEY JAMES RAFFERTY: The lot's 2100 square feet.

TAD HEUER: That's the answer. So we say the variance runs with the land. The variance does run with the land, but in the context of another structure. So if you're asking for FAR relief, it's because there's another structure there that you need relief for. The combination of those two things

puts you over some kind of a limit and that's why you come for relief. And that's why probably the Board granted the variance. If you're being required to come before us for a Special Permit now, we're not in a by-right situation. My reading of both Brooklyn and Bransard (phonetic) suggests we're not in a by-right situation. I think we're in a Special Permit situation. It suggests to me that if you're before us again for relief, the variance does have somewhat come into play because you don't have a by-right situation anymore. You're in a Special Permit situation. And the variance, although granted to the structure that was there is not necessarily granted, the structure that you admitted is not there because you need to come back for a Special Permit. So, there's an existence possibly only because the statute is vague and because the cases are not entirely clear, so that's what troubles me.

I'd be comfortable saying the 1270 to 1270 can you reconstruct as been mentioned by Mr. Hughes and Mr. Sullivan and Mr. Anderson same footprint, same massing and same cube, same purpose. I don't think I would be prepared to go to the 2100 foot because I think there is a tension between why a variance is granted and how far it can be stretched to saying it's running with the land when it is clearly granted by us in accordance with plans, opportunity to another type of structure on the property. So for those reasons I think I would be comfortable with committing ourselves to the 1270, 1270 situation. I would not be comfortable with the Board saying we're going to 2100 and that's what the petitioner has asked for.

CONSTANTINE ALEXANDER: Well, since I'm the only one who hasn't spoken, but basically I concur with Tad. I do think the

variance changes the -- I don't think you get the benefit of the variance, so that it's 2100, 2100 square feet. I think you have to look at the variance separately. That variance is something, that something that never got built. And what's now going to appear on the scene is 2100 square foot house where once was 1200 square foot house. That increases the nonconformity, it clearly does. If you ignore the variance, and I think you have to, that brings us squarely within the crux of the case and the Bradford case. So, I don't think, and I think there would be a substantial detriment to the neighborhood. I don't buy the argument there are some houses in the area that are bigger or as big as the house you want, the 2100 square foot house you want to build. I'm familiar with the neighborhood by taking walks through there and checking out the property and this is a very tight

neighborhood. The houses are small, lots are small and large structures don't fit in. Even if there are some there now, it's inconsistent with the overall pattern of the neighborhood however a neighborhood is defined. I can't support in granting relief. That being said, I'll make a motion to grant the relief and we'll take a vote unless people wanted to comment further.

The Chair moves that the Board find that the plans put before us by the petitioner would not constitute -- does not increase the nonconforming nature of the structure. That being so because of the fact that the structure, though it was originally a 1200 square feet, received a variance to add another 900 foot addition. And so, for purposes of Section 6 of Chapter 40-A the variance is deemed to be -- the structure is deemed to include what would have been built pursuant to the variance and therefore there

is no increase in the non-conforming nature of said structure. And further that the granting -- and, therefore, we should grant the Special Permit pursuant to Section 6. And that we can grant such a Special Permit on the basis of a finding that what is being proposed will not be substantially more detrimental than the existing non-conforming structure to the neighborhood. The case being that this Board has found that in a different context that there is no detriment when we granted the variance for the addition in the first place.

And further on the basis that there are structures in what may be generally described as the neighborhood that will be as big or roughly as big or bigger than the proposed project and built on lots that are, according to the petitioner, at least no bigger, generally speaking than the lot he owns.

The Special Permit would be granted on

the condition that the work be proceed in accordance with the plans submitted by the petitioner. They have been prepared by Ellsworth Associates dated 1/28/2010 and they're numbered TST.1.1, A0.1, A0.2, A1.1, A1.2, A3.1, A3.2, A3.3, A3.4. The first page of which has been initialed by the Chair. All those in favor of granting --

BRENDAN SULLIVAN: Mr. Chair, would you want to incorporate the letter of Charlie Sullivan as reference, and I don't know, I forget now if there are some conditions in there?

CONSTANTINE ALEXANDER: There are no conditions in the letter I read. There may have been conditions in the original grant that was made two years ago.

BRENDAN SULLIVAN: As long as those drawings reflect the agreement with the Historical.

MALE AUDIENCE MEMBER: They do.

ATTORNEY JAMES RAFFERTY: Just a procedural question.

CONSTANTINE ALEXANDER: By all means.

ATTORNEY JAMES RAFFERTY: Those plans are not the plans that the variance is based upon. So, I wouldn't want any interpretation that by approving these plans of the Special Permit, to the extent there's any discrepancy to the plans that were contained in the variance, that this proceeding would trump the variance.

CONSTANTINE ALEXANDER: Fair enough.

It is the assumption of this Board and the motion that these plans are to comply with the earlier granted variance. And if they do not, then these plans are not approved and the terms of the original variance stand. In no way does what we're doing tonight if we pass the motion that's been proposed will alter

the terms of the --

BRENDAN SULLIVAN: We're not amending the original variance in any way.

CONSTANTINE ALEXANDER: It stands as it is.

TAD HEUER: In other words, this is granted for the 1270 as shown in those plans, would that be accurate?

CONSTANTINE ALEXANDER: That's not the motion I made. We can make the motion -- the motion I made is for the 2193 feet.

SLATER ANDERSON: I'm with Tad. I'm focused on the original 1270.

ATTORNEY JAMES RAFFERTY: There are no plans.

SLATER ANDERSON: But where they differ from --

CONSTANTINE ALEXANDER: Let me rephrase the motion.

The motion would be not to allow the

petitioner to build a structure no greater in size and no different footprint than the original 1200 square foot plus structure. So the relief would be granted would be only to allow a structure like the structure that was there before the variance was granted when the demolition took place. That's the motion you would like me to make?

SLATER ANDERSON: Yes. And consistent with the granted variance.

CONSTANTINE ALEXANDER: Consistent with the variance. If that's the motion, then we're not talking about allowing you to go forward with the threes plans. We're allowing you to come back with new plans or go to the Building Department with new plans if you wish to proceed for a 1200, roughly 1200 square foot structure.

ATTORNEY SHAW MCDERMOTT: I am confused now actually.

CONSTANTINE ALEXANDER:

Understandable.

ATTORNEY SHAW MCDERMOTT: We sought application to reconstruct the original house, but we also indicated as you see in the sheets in front of you that consisted with permits previously issued and not revoked, that we would be permitted to go forward with a completion of the entire project based on in part upon the variance granted. In other words, it would be as indicated on the front sheet, 2193 square feet of building constructed as had been previously allowed by variance, by the issuance of permits to build that structure.

CONSTANTINE ALEXANDER: I think what we -- I'm sorry.

ATTORNEY SHAW MCDERMOTT: And what we're trying to indicate is that, and I hate to repeat, pardon me for doing that, that we don't think the statute requires a single-family homeowner, just as Mr. Hughes

has indicated, a Special Permit to rebuild a single-family dwelling. But if you think that because of the impact of the City of Cambridge provision related to Special Permit provision that relates here, we're willing to go forward and build with a Special Permit the older part of the structure. But have it understood that the outstanding permits call for the building of 2199 square feet.

TAD HEUER: They call for it?

ATTORNEY SHAW MCDERMOTT: They indicated, yes, they do.

TAD HEUER: You must build that?

ATTORNEY SHAW MCDERMOTT: They allow for it.

TAD HEUER: Allow for it?

CONSTANTINE ALEXANDER: I think what we're saying here --

ATTORNEY SHAW MCDERMOTT: They speak to. Call out.

CONSTANTINE ALEXANDER: We're speaking tonight. You had a 1200 square foot structure on the property.

ATTORNEY SHAW MCDERMOTT: Yes.

CONSTANTINE ALEXANDER: It's been demolished.

ATTORNEY SHAW MCDERMOTT: There's some question about that. No offense. Listen, listen. Please just bear with me.

CONSTANTINE ALEXANDER: Stop, stop. It's been demolished. I'm not going to entertain any more discussion. It's been demolished.

ATTORNEY SHAW MCDERMOTT: It's a legal point.

CONSTANTINE ALEXANDER: The motion that's being made tonight is to allow you to rebuild that same structure. And whether you can build more than that, you're saying you have a right to do it because you have all kinds of permits from other city officials.

TAD HEUER: And a variance.

ATTORNEY SHAW MCDERMOTT: And a variance.

CONSTANTINE ALEXANDER: We'll leave that to the city officials to determine if your statement is correct. We're going to pass the motion tonight to build the 1200 square foot house on the same footprint. And then --

JOHN GREENUP: Can we have a moment?

SLATER ANDERSON: I have a question then. Because that's sort of my position. I really want to keep this narrow on the existing house. But the dimensional form does speak to the 2193.

CONSTANTINE ALEXANDER: And they do, and the plans submitted does as well.

SLATER ANDERSON: How do we split the baby on that one?

BRENDAN SULLIVAN: We're giving permission to build the 1270 square foot

front section of the structure and to proceed with the addition as per the variance that was granted.

CONSTANTINE ALEXANDER: Yes. I don't think we have to get to the second part. That's effectively what we're doing. What we have to do, us as the Board, we would allow a new structure to be built having the same size and footprint as the demolished structure. And beyond that it's -- the law is what it is. You have a variance. We build with the variance, that's to be determined. Say you have permits, you'll have to resolve that with the city officials. You may be back before us. But I don't think we're going to pass on that tonight. That's your point and your point.

So, are we all clear that the vote adopted, it will be just to allow you to rebuild a 12 -- roughly 1200 foot structure and then good luck as to whether you can do

more than that. That's not what we're going to decide tonight.

ATTORNEY JAMES RAFFERTY: So, Mr. Chairman, my understanding would be as the Board traditionally conditions it on the plans in this case it would be, it would not be those plans?

CONSTANTINE ALEXANDER: I'm going to rephrase the motion because of that because we've been around on that.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: I'm going to amend the motion to say first of all, all we're permitting is to allow a structure to be built that has the same square footage and the same footprint as the original structure that was demolished and that there's no condition tied to any plans.

That is just, if what you want to do has the same footprint and the same square footage, there's no need to come back before

our Board to build a 1200 square foot house. And then, again, you're off to do what you wish with regard to building a bigger house if you think you have a right to do that per the variance and per the other permits that you've received. But we're not, we're not going to say that you have a right to do that. We're only go to say you have a right to build a 1200 square foot house.

ATTORNEY SHAW MCDERMOTT: For the record, I think it creates unnecessary ambiguity because we've submitted the application with the plans as indicated and we can proceed to build, you know, in accordance with the permits and variances, approvals, Certificates of Appropriateness and so on previously granted. And I think it's unnecessary to inject that ambiguity that we asked for --

CONSTANTINE ALEXANDER: We don't have a choice. We can have the motion as I

originally phrased it and we can vote on it and you'll get your votes, fine.

ATTORNEY SHAW MCDERMOTT: The way that you originally phrased it, Mr. Sullivan, I don't think seconded it, but Mr. Sullivan iterated it again is a way we would have preferred it, yes.

CONSTANTINE ALEXANDER: I want to make sure.

ATTORNEY JAMES RAFFERTY: He wants a motion for a 2100 square foot house.

CONSTANTINE ALEXANDER: What you're asking us to vote on is allow you to build a house in accordance with these plans which is 2100 square foot house; is that right?

ATTORNEY SHAW MCDERMOTT: You made a motion with the original motion.

CONSTANTINE ALEXANDER: And we amended it.

ATTORNEY SHAW MCDERMOTT: I don't know if you amended it or not. But that

motion was appropriate because you made certain specific references to findings. We're asking for a determination as to the relief that it pertains to 1270 square foot structure. But the original motion you made is correct because it would allow us to proceed on the basis of the plans submitted and the dimensional numbers indicated.

BRENDAN SULLIVAN: I'm just saying the Commissioner is in attendance. If we want to query him, if he understands fully seeing how he is the authority, your motion and what our intent is here or if that's not necessary.

SLATER ANDERSON: It's in his letter.

CONSTANTINE ALEXANDER: What we got from the Building Commissioner does not include the variance. You're asking us, and that's fine, go back to the motion I probably inarticulately first made, a motion to allow

you to build a Special Permit, to build a structure in accordance with these plans. And these plans are for the full 2100 square foot. If that's what you want and that's what I first said it, we'll put it to a vote.

ATTORNEY SHAW MCDERMOTT: What I said is that I thought your motion with all the findings that you had indicated was appropriate. And one of the findings was that the 2100 square foot structure is completed in accordance with permits and variances previously granted would not be substantially detrimental to the neighborhood. Those are the findings you asked for.

Now with respect to the zoning issue as to the original structure, again, I think I agree with Mr. Hughes that we probably don't need zoning relief. But if for purposes of your City of Cambridge Code you want to indicate that that portion of the project

requires a Special Permit, we will live with Special Permit that pertains to that portion of the project. But I think your --

TAD HEUER: You will accept the second as amended motion?

ATTORNEY SHAW MCDERMOTT: But I don't want -- I said --

TAD HEUER: We make up the motion right here.

ATTORNEY SHAW MCDERMOTT: You did make up the motion. You said it.

TAD HEUER: And we can change it. I mean --

ATTORNEY SHAW MCDERMOTT: If it was the finding that was critical.

ATTORNEY JAMES RAFFERTY: The stenographer has it. She could give it to him.

ATTORNEY SHAW MCDERMOTT: The finding was as I think articulated, we can get that from the stenographer, that the 2100

square feet plus, 2193 square foot house would not be substantially detrimental to the neighborhood.

CONSTANTINE ALEXANDER: That is correct. We haven't voted whether to make that finding.

ATTORNEY SHAW MCDERMOTT: That's right.

CONSTANTINE ALEXANDER: That's the finding.

ATTORNEY SHAW MCDERMOTT: To answer your question, that finding -- because that is --

CONSTANTINE ALEXANDER: Okay, fine. Everyone understand what the petitioner has asked for?

TIM HUGHES: It seems to me we're voting at least if we do a motion the way he's just described it, we're voting a second time on something that's already been voted on. What we really want to make a motion for is

to issue a Special Permit for the reconstruction of the pre-existing non-conforming portion of a single-family dwelling, period.

ATTORNEY JAMES RAFFERTY: That's not what he applied for. He applied for a Special Permit. He submitted plans and I dimensional plan for a 2193 house and that's what he wants his motion on.

CONSTANTINE ALEXANDER: And he wants us to make a finding that that 2100 square foot house satisfies Section 6 because it includes property or a portion of the house that was approved per a variance before. So he says a variance was granted. That's already part of the 2100 square foot house. And now the house as increased by the variance is entitled to the findings that I've moved.

TIM HUGHES: But he's asking -- that motion is asking us to vote on whether or not it's on the detriment question, again, which

has already been voted on.

CONSTANTINE ALEXANDER: The detriment question was on the content of whether a variance, a 900 square foot addition.

TIM HUGHES: To a house was 2100 square feet. So we're voting on something that was already voted on.

CONSTANTINE ALEXANDER: The variance was voted -- we granted a variance as to an addition. The vote tonight is whether to allow a non-conforming structure to be rebuilt. And it was a different context for the substantial detriment. There is -- the words are the same. The context is different. And so therefore I don't think we're revoting on it. We may come to the same conclusion which is Mr. McDermott is suggesting we should do. But I don't think we're revoting. It's just different context.

TAD HEUER: I'm also -- and I'm a lawyer but I hate to do this. In looking at Bransard (phonetic), it says the rule to date, therefore, is simple where an undersized lot exists, the proposed reconstruction may be allowed for Special Permit only if the proposed new residence does not intensify existing conformity. I'm not prepared to say that you don't need a Special Permit to go forward. If you're here before and if you think you can do it without a Special Permit, then as I said before, you are free to go and operate under building permits and see what happens. If you're in front of us and you'd like a Special Permit because you think it's necessary, and quite frankly given that language, it's adopted by Brooklyn it is required, you are looking for a Special Permit before us and I think you need one. If that's the case, you're looking for a Special Permit and I think granting on

the Special Permit is the need for a Special Permit to reconstruct the structure that's been unconstructed.

CONSTANTINE ALEXANDER: I think we have a motion, I think we should vote on the motion which includes the variance findings and see whether the motion passes. And if it doesn't, then we'll vote on further findings.

So we have a clear record, for the record, I guess one more time and in summary form because I think I can read back we've gone around the bush so many times. In some reform what is being proposed, again, is a Special Permit to allow the construction of approximately 2100 square foot house in accordance with the plans that were submitted. And on the basis that we would grant that Special Permit pursuant to the authority granted to us under Section 6, Chapter 40-A.

SLATER ANDERSON: We're not

amending it. We're going back.

CONSTANTINE ALEXANDER: That's what the petitioner has asked for.

TAD HEUER: What is the recourse for the petitioner?

CONSTANTINE ALEXANDER: I think the same recourse that petitioner can make they go to the Court.

TAD HEUER: Is there two year coming back or no?

CONSTANTINE ALEXANDER: Coming back -- they can come back for a variance for example on something different.

TAD HEUER: Can they seek in the alternative a 1200 -- a limited --

CONSTANTINE ALEXANDER: If they came back with a 1200 foot structure, that would be -- it wouldn't be a repetitive petition. It would be completely different. They could come back with that. They could come back with 1400 or 1600 square foot house

I think. And I think they could do that within the two years. They can't come back with a 2200 square foot house in the next two years.

Are we ready for a vote?

ATTORNEY SHAW MCDERMOTT: If I could -- Mr. Hughes I think is correct in what he said.

CONSTANTINE ALEXANDER: We're not, no more --

ATTORNEY SHAW MCDERMOTT: The application was to reconstruct the 1270 portion of the project. That's the application. We showed the plans because the plans are consistent with what the variance was previously issued.

ATTORNEY JAMES RAFFERTY: That's not what the application says.

CONSTANTINE ALEXANDER: No, no, we're chasing our tail here. We offered you that. That's what Slater put out and

Mr. Heuer put out.

JOHN GREENUP: We'll accept that. We're trying to get our head around what you're thinking. We're trying to understand where your heads are at. What we would like to have --

CONSTANTINE ALEXANDER: We haven't taken a vote yet. You want us -- what you're asking us to do is to approve -- say that Section 6, Chapter 40-A allows you to rebuild a house with the same square footage and the same footprint as before. That's all we're going to say.

JOHN GREENUP: What we'd like you to say essentially is what you just said, which is to reconstruct the portion the original portion of the house that was 1270 square feet and I'd like you to use the word the portion.

CONSTANTINE ALEXANDER: I'm not going to use the words. We're not -- because you can't have it both ways. You look at the

house without the variance and deal with the variance in a different forum or you go here and say the variance was granted. Part of the house where the house should be before you is 2100 square foot. We're going to rebuild a 2100 square foot house and you're entitled to the benefit of Section 6. Which do you want?

TIM HUGHES: I don't -- rebuilding the original house is the 40-A Section 6 part.

CONSTANTINE ALEXANDER: And that's what I'm going to make the motion for. I'm not going to talk about a portion. We will allow you to build, we're going to say Chapter 40 -- if the vote passes. You can rebuild a structure that has the same footprint and the same square footage of the building that was demolished exclusive of any variance that was granted to you. The variance is a separate issue not before us tonight, and may be before us in a future date but not tonight. That's

all we're going to vote on tonight. Agreed? Understood? One more time. You've changed your mind.

ATTORNEY SHAW MCDERMOTT: I don't want to be whip sawed because we said we submitted plans that are somehow inconsistent. We're submitting plans that are consistent with the project and we have to do that. That's on the basis in which the city officials will proceed to see whether we're building the right structure.

TAD HEUER: Certainly, but this is a somewhat different situation than what someone asked to come in and move a window and said we need a plan so we can tell where you put the window, correct?

ATTORNEY SHAW MCDERMOTT: We're going to build the structure that's contemplated in those plans. I mean, that's --

CONSTANTINE ALEXANDER: Whether you

can build that structure is not a determination we're going to make tonight. I'm trying to make you understand. You're going to have to be on your own with the city officials to persuade them that you can do this. We're not saying tonight you can do this. We're saying you can go back and rebuild what you had before.

ATTORNEY SHAW MCDERMOTT: Fine. My point was this: Your original motion as you made it had, it was -- really captured Mr. Hughes' point which is correct, which is what we've asked for which is to rebuild. This is what the city official advised us to do, to rebuild the 2100 square foot structure. We're making certain other findings in your motion. You asked me do you want those findings? And I said sure, I want those findings.

CONSTANTINE ALEXANDER: Those findings --

ATTORNEY SHAW MCDERMOTT:

Mr. Hughes was correct in the way he articulated.

CONSTANTINE ALEXANDER: Findings, only substantial lack to the detriment of the neighborhood only apply to a house that is rebuilt that contains the same square footage as before and has the same footprint as before. If that is what you rebuilt, and that's, then you have the bene -- then you have those findings assuming we so vote that way. But you do not get the findings that -- those findings do not allow you to build a 2100 square foot house. Whether you can do that depends on the variance you were granted before and the permits you say you have that allow you to do it. And that will be determined, again, by some other parties other than this Board. We all clear?

TIM HUGHES: I think so.

ATTORNEY JAMES RAFFERTY: If that's

the motion.

CONSTANTINE ALEXANDER: The motion, one more time to get it right.

The motion is to allow the petitioner to make a finding under Section 6, Chapter 40-A that the rebuilding of a structure of the same size and the same footprint as the structure that was originally on the lot was demolished; i.e. the structure that's approximately 1200 square foot.

That such a rebuilding does not increase in non-conformance and does not create substantial detriment to the neighborhood, because all it is is rebuilding a structure that was identical in terms of the neighborhood impact to what was there several years ago.

TAD HEUER: On an undersized lot.

CONSTANTINE ALEXANDER: On an undersized lot, right.

The lot hasn't changed. There's

limited findings. I want to be very clear about that. And you cannot go out and talk to the other town boards and say, well, the Board approved allowing you to do a 2100 square foot house. We have not -- or assuming the vote gets adopted. We've only allowed you to do something much more narrower than you came here before us. You came before us to build a 2100 square foot house. And we're not saying tonight that you can do that. We're not saying you can't. We're just not passing on that. Okay?

ATTORNEY SHAW MCDERMOTT: You're making no reference to the prior issue variance?

CONSTANTINE ALEXANDER: That's correct.

TAD HEUER: Correct.

TIM HUGHES: Correct.

CONSTANTINE ALEXANDER: Absolutely right. The variance stands as it is, good or

bad.

BRENDAN SULLIVAN: Combine the two.

CONSTANTINE ALEXANDER: They can combine the two. We're not. That's not for us.

BRENDAN SULLIVAN: Take what was done before and what's done tonight and put the two of them together.

CONSTANTINE ALEXANDER: All those in favor of making those findings and granting the relief so proposed say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Anderson Heuer.)

(Discussion off the record.)

(9:20 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9626, 45 Foster Street. A different case, a Special Permit case. The petitioner has requested a continuance of this case until seven p.m. on April 29th.

The Chair moves that this case be continued until seven p.m. on April 29th. We already have a waiver of notice of making a decision for the file. Just be sure that the sign be modified one more time to reflect a new hearing date.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer,
Anderson.)

(9:20 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 9569, 45 Foster Street.
This involves a request for a variance. The
petitioner requested a continuance of this
case as well until seven p.m. on April 29th.

The Chair moves that such a continuance
be granted on the condition a waiver of time
for a decision having already been signed.
On the condition that the sign be modified as
well to reflect a new hearing date.

All those in favor, say "Aye."

(Aye.)

(Alexander, Hughes, Sullivan,
Anderson, Heuer.)

(9:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9834, 59 Shepard Street. Is there anyone here on that case?

ATTORNEY ARTHUR KREIGER: Yes, Mr. Chairman.

CONSTANTINE ALEXANDER: This should be quick. You're here on a motion to withdraw?

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: You made a request that's withdrawn without prejudice and that's not permitted.

ATTORNEY ARTHUR KREIGER: I understand that. I submit, and I don't mean to make a bigger issue of this than it needs

to be, the statute directs that it can be withdrawn that way.

CONSTANTINE ALEXANDER: Sir, we've been here, it's almost 9:30 at night. This is an academic argument. We granted you a Special Permit to do an antenna down the road.

ATTORNEY ARTHUR KREIGER: On Gilbert.

CONSTANTINE ALEXANDER: I'm not going to get into a debate or legal discussion as to whether we have a right to dismiss without prejudice.

ATTORNEY ARTHUR KREIGER: I fully agree. I wanted to make my point for the record and you decide what you decide.

CONSTANTINE ALEXANDER: Thank you.

The Chair moves that this case be withdrawn with prejudice as provided in our Zoning By-Law.

The Chair having noted in the motion, should note that the petitioner doesn't agree

with that position and is reserving his rights. So the motion would be to withdraw the petition with regard to the relief being sought for 59 Shepard Street.

All those in favor, say "Aye."

(Aye.)

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

ATTORNEY ARTHUR KREIGER:

Mr. Chairman, you do have my January 21st letter I assume that? Sean, you have that? I had a January 21st letter making that request.

CONSTANTINE ALEXANDER: We have it in the file. That's in the file.

SEAN O'GRADY: It's in the file.

(A discussion held off the record.)

(9:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will next call, now on to our regular agenda, case No. 9880, 148 Larch Road.

Anyone here wishing to be heard on that matter? Is the petitioner here?

The Chair notes -- wait, wait. You're not the petitioners, are you?

MALE AUDIENCE MEMBER: No.

CONSTANTINE ALEXANDER: The petitioner is not here. We have a letter in the file?

SEAN O'GRADY: It should be in the file.

CONSTANTINE ALEXANDER: There is a letter in the file from one of the petitioners. Looks like Joellen Gavin,

G-a-v-i-n addressed to the Board dated January 12th. It's actually addressed to Maria Pacheco our Zoning Administrative Assistant. "Maria: As we chatted on 11 January, due to my husband's work travel schedule, I'd like to request a new hearing date so that he will be able to attend. I'm sorry for this change, but the project is so important to us that we both like to be there. You had mentioned that 11 March may be a possibility, and we would be grateful for the end of February or beginning of March. I've gone ahead and posted the notice on our front door which right now states that the 28 January date. I will wait to hear from you."

So, we have a motion to continue this case. Sean, do we have a waiver of time for a decision from the petitioners?

SEAN O'GRADY: I don't think so.

CONSTANTINE ALEXANDER: Then we need to get one on the condition of relief on

that. And I know you folks back there are here for that case.

FEMALE AUDIENCE MEMBER: I don't know that I'm going to say anything but I'm here for that as well.

CONSTANTINE ALEXANDER: My only point is the request for March 11th, is that a date that works for you people? You were patient enough to stay here all this time, I think we should take your schedules into account.

MALE AUDIENCE MEMBER: That's fine.

FEMALE AUDIENCE MEMBER: I'm sure it's probably fine. It's good -- fine with me.

CONSTANTINE ALEXANDER: March 11th, we have room on the agenda?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair moves this case be moved to March 11th at seven p.m. on the conditions that the

petitioner sign a waiver of notice for making a decision.

On the further condition that the signage on the property be modified to reflect the new hearing date.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

CONSTANTINE ALEXANDER: Case not heard.

(A discussion held off the record.)

(9:30 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan, Sullivan, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case 9884, 1558 Mass. Avenue. And for those of you in the audience, we're taking this case now because it's passed the time we thought we would hear it and because we have an associate member or a different member for this case due to a conflict. As a courtesy to him, we're going to take the case now so he doesn't have to stay for the rest of the night. The regular member who cannot sit on this case will return and sit at the table.

So, with that explanation, sir, go ahead.

ATTORNEY ARTHUR KREIGER: Thank you, Mr. Chairman, members of the Board. My name is Arthur Kreiger from Anderson and Kreiger here in Cambridge representing AT&T.

With me is RF engineer radio frequency Jobet Mariano, Josh Delman consultant to AT&T and Frank Pedro, P-e-d-r-o in case any questions come up.

Let me start by distributing the legend sheet to the photo simulations where you see where this project is. 1558 Mass. Ave. as I'm sure you'll immediately recognize is above the Christian Science Church north of the commons on the left side of Mass. Ave. opposite the new law school building. So there will be eight photo simulations that I'll show you. You can see that the building itself has an -- it's sort of an H-shaped more or less. It has a cut out on the north side that will be part of the discussion in a moment. The entryway is that cut out on the south side on the side of the church. That's how you get in off the street. The application was filed on December 7th. It's got the usual exhibits that I won't recite.

It's got plans, photo sims and radio frequency reports, etcetera. That application was for an equipment shelter, equipment in the basement. This is not a case we have to figure out the visual impact of the equipment on the roof. It's in the basement. Three storage lockers are being converted to an equipment room in the basement and those tenants' storage capacity has been relocated. That's fine. The initial plan was to have the two air conditioning units for that equipment just outside the basement window in that northern cut out that I pointed out in the building. That's actually below grade. It's one flight down. It's the emergency egress part of the emergency egress from the building. And just to the north side is a set of yellow condos. They don't show yellow in the aerial photograph, of course, but you're familiar with the yellow condos between this building

and the brick building farther north. Those condos are just on the other side. They abut that property line. And so they're right opposite that well where the AC units were going to be. So on January 21st we submitted revised plans because the noise report had come in showing that while it might be possible to mitigate the noise from those AC units, the impact on the neighbors, because of that, well surrounded by concrete and brick on all sides you might get reverberation. It was going to make it too difficult. To solve the sound issue we're moving the AC units to the roof. And we're making other changes. We also took the antennas that were facade mounted in that well, and that would have been visible straight across to the condos and put those on the roof with the other two sets of antennas. The GPS antennas are on the roof under the plans submitted on January 21st.

That should reduce the visual impact to those neighbors as well. And the third change was to make a correction. You realize that the plans initially submitted showed five existing chimneys that dot this roof at ten feet high and that's not true. They're about six feet high. So the plans that we put in with the improvised application corrected the existing antennas to six feet.

CONSTANTINE ALEXANDER: I know they're in the file, but do you have a set of the plan of the amended sheet and the set of the photo simulations showing the amended?

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: Do you have an extra copy?

ATTORNEY ARTHUR KREIGER: I'm about to move to the photo sims.

CONSTANTINE ALEXANDER: Do you have a copy we can keep.

ATTORNEY ARTHUR KREIGER: I'm going

to distribute them and you can keep as many as you like. What I'm going to submit is photo -- a full set of photo simulations then I'm going to describe a further change that we made to the design that you haven't seen yet, but it's a mitigation, it's lowering the chimneys and I have a partial set of photo sims. But I want to get a full set of photo sims in front of you.

CONSTANTINE ALEXANDER: Was this change shown to the Planning Board?

ATTORNEY ARTHUR KREIGER: Yes, absolutely. And the Planning Board -- the Planning Board approved it.

CONSTANTINE ALEXANDER: When did they approve it?

ATTORNEY ARTHUR KREIGER: Tuesday night. You have a letter from the Planning Board?

CONSTANTINE ALEXANDER: We have a letter which I'll read into the record. I

just couldn't tell whether they're talking about -- you said you have a further amendment tonight. A further amendment is what the Planning Board saw as well?

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: That's what I wanted to know.

ATTORNEY ARTHUR KREIGER: I'll explain that. And here's -- I think this is this is a full set of photo sims. I only have the four copies, I think.

CONSTANTINE ALEXANDER: How about the plans themselves?

ATTORNEY ARTHUR KREIGER: Yes. But you know so not to confuse the record, you have that set of plans in the record. I'm going to give you the newest set of plans for a moment. I want to keep this in sequence if I may. You have eight sheets. Seven before and afters, and the last sheet is just a before because the after, there's no after.

It's not visible from that location. So now these plans are showing six foot high existing chimneys and then three pairs of proposed chimneys at ten feet high. And you can see they're visible particularly across Mass. Ave. in photos 2, 3 and 4. I'm sorry, really 3, 4 and 5 head on across Mass. Ave. We weren't satisfied with those plans. They might have gotten approval from the boards, but the chimneys were not oriented square foot roof so they didn't look like false chimneys. They were diagonal rather than being the same orientation than the existing chimneys. And the proposed chimneys were ten feet high. They were ten feet back from the edge. I remember from the Hilles discussion that one to one ratio. So what we've done now is moved them -- we reoriented the chimneys to be square with the other chimneys in the building edge, move the three set, move the chimneys that are proposed

close to six feet from the edge but lowered them to six feet high. So the same one to one ratio. And the Planning Board liked that change very much and that's what they approved. The -- we made that change with the two sets facing Mass. Ave.

Let me distribute the plans now so we can see what we're referring to. So this is a set of plans that has not been submitted before.

CONSTANTINE ALEXANDER: But the photo simulations submitted before show the ten foot high chimneys that you say you're not doing now?

ATTORNEY ARTHUR KREIGER: Correct. And what I'm going to submit after orienting you on the plans are the new plans.

CONSTANTINE ALEXANDER: Okay. I'm slow tonight.

ATTORNEY ARTHUR KREIGER: Okay.

So these plans, if you -- and just for

the record, these have a revision date of 1/26/10. So that is the latest set of plans. And if you turn to sheet Z2, three sheets in, you can see three pairs of roof mounted antennas and in false chimneys. That's correct. And each of the chimneys -- these are balance as mounted, so the squares you see are row concrete blocks as you see in the cutout on the left, the enlargement on the left. It's really the smaller squares which are the existing antennas -- I'm sorry, the existing chimneys if you look at some of those on the roof. The chimneys we're proposing are the same height and roughly the same width as the existing chimneys and oriented the same way as you can see they're square foot edge.

CONSTANTINE ALEXANDER: Ordinarily we would not allow a case to go forward with plans that were submitted later than five p.m. on the Monday before our hearing.

ATTORNEY ARTHUR KREIGER: I understand that.

CONSTANTINE ALEXANDER: But, since these plans that you're showing us really are less intrusive -- post-construction that's less intrusive than before and shown to the Planning Board, I'm at least going to go forward tonight.

ATTORNEY ARTHUR KREIGER: This is a minor modification and it's in the right direction and I was hoping you would take that view.

CONSTANTINE ALEXANDER: Other members of the Board have a different view?

TIM HUGHES: No.

SLATER ANDERSON: I have a question on the plan.

ATTORNEY ARTHUR KREIGER: Let me just mention -- I'm sorry.

SLATER ANDERSON: No, I'm fine with going ahead.

ATTORNEY ARTHUR KREIGER: You can see the air conditioning units here in the middle of the roof on the south side of the existing penthouse. There are two existing penthouses that are silver. They're not brick. There's a large skylight that you can see on the other side of the cable run. So when we move the two AC units up to the roof, we propose to locate them tucked into the south side of the existing penthouse that will shield those condos to the north from any noise in that direction. Then the only noise question are the other three directions and I'll talk about that. You see the cable runs. The cable vertically was going down the corner of that five story well right to the basement level and then into the equipment that's in one of those storage lockers.

BRENDAN SULLIVAN: Am I reading that it's going to cross windows?

ATTORNEY ARTHUR KREIGER: Cross windows where? Which plan are you looking at for that?

BRENDAN SULLIVAN: C3.

ATTORNEY ARTHUR KREIGER: I don't believe so. Where are you looking now?

SLATER ANDERSON: That's inside the building. That cable run is.

ATTORNEY ARTHUR KREIGER: The cable run is down the outside of the building in the corner of the cutout of the shape.

SLATER ANDERSON: The windows we're seeing are on Mass. Ave?

(Discussion off the record.)

ATTORNEY ARTHUR KREIGER: The east elevation.

CONSTANTINE ALEXANDER: So this is inside the well?

ATTORNEY ARTHUR KREIGER: And I say well it's a room sized courtyard, but that's right. It's going to go right down the

corner. There's room between the laundry windows and windows above it on one side and the basement door and the stack of windows on the other side.

SLATER ANDERSON: Can I ask a question about the plans?

ATTORNEY ARTHUR KREIGER: Sure. Any other questions on the plans?

SLATER ANDERSON: You mentioned the one to one ratio. Looking at the dimensions on this plan it looks like you say that these are six feet tall, but the six feet is from, it looks like from the middle of the chimney not from the edge of the chimney. I mean, it's close to the middle.

ATTORNEY ARTHUR KREIGER: I think it's right to the edge of the chimney. It's inside the ballast.

SLATER ANDERSON: Not the dimensions that are on this. They show right here that six foot runs to the inside where

the equipment is to the outside of the building not from the edge of the chimney.

ATTORNEY ARTHUR KREIGER: No, that's what I was saying before. The average squares are concrete blocks. The chimney is merely the inner square right around the equipment and that's what I said is comparable to the existing chimneys.

SLATER ANDERSON: I understand.

ATTORNEY ARTHUR KREIGER: No, those would be huge chimneys. That would be a problem.

TIM HUGHES: I have a question on this west elevation though. Two of these chimneys ten feet, one by the penthouse and one free standing, is that accurate?

ATTORNEY ARTHUR KREIGER: The west elevation.

TIM HUGHES: Top left of the west elevation on Z3 still ten foot chimneys depicted there?

ATTORNEY ARTHUR KREIGER: I'm not seeing where.

CONSTANTINE ALEXANDER: Z3.

ATTORNEY ARTHUR KREIGER: I'm sorry. Yes, the -- if you turn back to Z2, just so I can refer easily to those.

SLATER ANDERSON: Those are setbacks.

ATTORNEY ARTHUR KREIGER: The one in the top left, the so-called C-sector are remaining ten feet away from the edge and ten feet tall. And the reason is facing Fallon Street. There is a three foot parapet rather than the one foot parapet surrounds the roof. And those need to be ten foot high to have the site over the ten foot parapet.

CONSTANTINE ALEXANDER: We'll see that on the photo simulation.

ATTORNEY ARTHUR KREIGER: And you'll see it's not a problem on the photo sim, but that's why those stay at ten feet.

So that pair is ten. Both of the other pairs come down to six.

BRENDAN SULLIVAN: One to one seems like a nice easy ratio, but why does it have to be that close to the edge of the building?

ATTORNEY ARTHUR KREIGER: For that I will turn to Jobet Mariano the engineer. You have a six or eight feet back.

CONSTANTINE ALEXANDER: Give your name.

JOBET MARIANO: Jobet Mariano J-o-b-e-t M-a-r-i-a-n-o, AT&T. We're trying to avoid edge of the roof so you won't be shadowing greatly at the bottom of the building so it still cover the directly below the building. So we can't be too far apart from the edge of the building.

BRENDAN SULLIVAN: Well, let me say from the onset that these photo simulations show obviously with the trees in full bloom. Having gone up and down Mass. Avenue 15 times

a day especially recently with the trees are not in full bloom. I think these are going to look horrendous.

ATTORNEY ARTHUR KREIGER: You're looking at the ten footers.

BRENDAN SULLIVAN: I am not convinced. I'm looking at anything up there.

ATTORNEY ARTHUR KREIGER: Let me pass these out and hope to convince you. So these are the latest photo simulations corresponding to the plans you just saw. This is only a partial set.

CONSTANTINE ALEXANDER: I'll pass them down.

ATTORNEY ARTHUR KREIGER: Okay. It's a partial set basically from the Mass. Ave. side because there's no difference, no need to reshoot photo sims from the Fallon side. Those didn't change. So what you've got is 1 through 5 before and after, again A

and B. And I hope you can see that with the leaves on the trees or off, they are no more intrusive than the existing chimneys on the edge of the roof.

BRENDAN SULLIVAN: You know, they don't look natural. You know, it's a stealth installation, stealth in parentheses, but it's not a natural looking roof with all of these things sticking up. And, you know, you've got this building, you've got the adjoining buildings all up on Mass. Ave. with flat roofs on them. It's going to be AT&T, it's going to be T-Mobile, Sprint, and everybody coming in and we're going to see, it's going to be a forest of stealth installations. I was here on this Board when the first cell towers came in and we said oh, here we go. And they were necessary evils. And sticking them on the side of the buildings and two here and two there. And now with all the new technology, the backhall conditions

and all this other stuff, it's become a plague I think. It's yes, a necessary thing, but I -- and in the past I think the Board has been very generous in granting an awful lot of these installations because we felt it was a necessary evil in a sense aesthetically. This one has pushed me over the edge the way it looks.

CONSTANTINE ALEXANDER: The dilemmas I've always had with these cases, we have to take a -- given the technological reasons for doing this, we have no way -- we don't have our own set of experts who could quarrel with this.

BRENDAN SULLIVAN: That's right.

CONSTANTINE ALEXANDER: We have to take what's presented to us and then we decide how bad the aesthetics or how good the aesthetic are.

BRENDAN SULLIVAN: And what's presented to us is their ideal situation.

What Hilles Library --

CONSTANTINE ALEXANDER: Again --

BRENDAN SULLIVAN: Not to paint you with that brush, this is the ideal situation for us. This satisfies our needs and it's acceptable to the land owner, the property owner.

CONSTANTINE ALEXANDER: And we have no way of finding it less intrusive.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: It's always been our dilemma.

ATTORNEY ARTHUR KREIGER: Some municipalities have retained consultants for Wireless Zone to checkout the wireless need in the town. It's a major undertaking, but you know, some towns have done that. And short of that exercise, all we can do is propose things that we think might minimize the impacts as I think we've done here.

DOUGLAS MYERS: If I can chime in

with what Brendan is saying, it seems to me in view of the priority, due to residential neighborhoods, even though for a large part of the circumference, a great many degrees, 270 degrees of the circumference from this building is not residential and nonetheless the 70 degrees, the vector that is the resident faces on Fallon Street is clearly residential, and one of the nicest residential areas in Cambridge, and it's going to be faced with the ten foot chimneys.

ATTORNEY ARTHUR KREIGER: If I can respond to that.

CONSTANTINE ALEXANDER: By all means.

BRENDAN SULLIVAN: Are your comments concluded?

DOUGLAS MYERS: No, no. And also I did look at the pictures. They're no new photo sims for Fallon Street. And I would certainly say that the bold -- the previous

pictures don't seem to show any particular effect of foliage, but nonetheless, I'm just emphasizing that one area here is residential and it's a not an important residential consideration.

CONSTANTINE ALEXANDER: There's no way to do this project with it mounted on the face of the building rather than extending up above the roof line.

ATTORNEY ARTHUR KREIGER: One antenna was on the face and we moved it to the roof because it's less visible to the neighbors on the north. They would see it on the side fully. And if they saw it on the top of the chimney --

CONSTANTINE ALEXANDER: It would seem to me the community's point of view is less intrusive if it's on the side of the building.

ATTORNEY ARTHUR KREIGER: I can ask. I don't know if we can answer it on the spot.

BRENDAN SULLIVAN: I don't know what the equipment is.

CONSTANTINE ALEXANDER: I don't either.

BRENDAN SULLIVAN: We're looking at chimneys that are a dimension?

ATTORNEY ARTHUR KREIGER: 30 inches.

SLATER ANDERSON: Why isn't the existing chimney utilized?

CONSTANTINE ALEXANDER: Putting it on the side of the chimney?

JOBET MARIANO: I think the painting and the brick and mortar was a structural concern, and typically only set it back. It diminished a little bit from the full view lines from the street. So both with those of taken effect was perhaps a better installation.

ATTORNEY ARTHUR KREIGER: And you'll see the pairs of chimneys that we need.

Even if we used an existing one in each sector we would need a second one. The dimensions of those existing chimneys are not big enough. They're not square. If I may, and I want to respond to your comment. Fallon is a beautiful street and we're mindful of the residential sector and we'll turn to that in a moment. I think the impact on Fallon Street is so minimal that there's no real impact at all on that side. The only impact that needed, that warranted mitigated ten feet down to six feet was across Mass. Ave. What I'd like to do is Jobet just run through the radio frequency issues, the coverage issue so you understand the need for this.

JOBET MARIANO: These are current, current coverage right now in Cambridge. Anything green is our in-building coverage that we are trying to mitigate, improve. And this particular side is trying to improve our coverage in and around the Cambridge Square

or common. And just without this elevation at the site, and this is the building where Harvard is, and we're trying to improve this area. And this is coverage. And you can see here that this needs to be covered a lot also in the west. And I also have here combined with -- we decided, we were here earlier with the Harvard.

ATTORNEY ARTHUR KREIGER: Gilbert.

JOBET MARIANO: Gilbert building, and trying to apply for today. And substantially the coverage.

ATTORNEY ARTHUR KREIGER: We wanted to show both sites together because I know the Board is looking beyond one application to the larger build out. But as you, as I'm not sure if you saw one of those or the last time with Gilbert areas, the Gilbert site alone does not cover this. They cover overlapping existing areas.

SLATER ANDERSON: I have two

questions. Can you go back to the first plan for a second? It seems to me that the area that you're lacking with coverage is to the west. And you put these structures on the east side so they're most visible to Mass. Ave. And I know the residential side on the other side. The other question, so why I guess one question is, you know, why are they clustered to the east side where they do have the greatest at least traffic visual impact? And the other question is, you know, it's getting back to the existing chimneys, I see three existing chimneys which aren't much different in size than the two-by-six or 30 inch by 30 inch faux chimneys that you're proposing I see adjacent to each cluster that you created here with some sort of face mount and you reduce what you're proposing by 50 percent.

ATTORNEY ARTHUR KREIGER: With the face mount, so not inside the chimney you're

saying?

SLATER ANDERSON: True. And you can face mount them on the, you know, on the inside edge. I mean, this is getting beyond my area of expertise on how these things work. But I've seen plenty of face mount models that you guys have come up with as well. It's just that I don't think it's maybe the best solution, but it does reduce the number of the spires coming off these faux spires that Brendan was talking about. Plus considering utilizing -- I mean, you've got -- you've got three chimneys there. Somebody else is going to come back and probably ask you for a chimney at some point. I just feel like chimneys may be utilized since they're existing and they have the elevation that you need.

ATTORNEY ARTHUR KREIGER: When you first asked about them I thought you meant mounting inside those chimneys which I don't

think can be done.

BRENDAN SULLIVAN: They're probably active chimneys.

SLATER ANDERSON: No, I'm sure they are. And I don't know necessarily. I don't know I'd have to see your photo simulation of how a face mount would probably look on it.

ATTORNEY ARTHUR KREIGER: You need a face mount plus a second false chimney next to it.

SLATER ANDERSON: You need the second -- you need six structures, I don't know.

ATTORNEY ARTHUR KREIGER: According to the RF people, yes.

BRENDAN SULLIVAN: Are there four major carriers? AT&T, Sprint, T-Mobile and Verizon. Is there anybody else out there? Adam, who do you represent?

ATTORNEY ADAM BRAILLARD: Metro PCS.

BRENDAN SULLIVAN: There's five. There could be a whole host, whatever it is, and everybody comes down and says they have a gap in coverage. Okay. And we're doing this piece meal. AT&T and then Verizon. I would almost like to see a map of the entire city of Cambridge and where everybody has coverage and where everybody does not, basically say that's it folks, because we have a potential, we have a potential of this times five. And all up and down Massachusetts Avenue, you know. And again, there's going to be stealth installations that aren't so stealth.

CONSTANTINE ALEXANDER: Well, well said Brendan. I was going to make a point. You've been a good listener before with this Board and you're starting to hear a lot of problems with this proposal. Do you want to rethink whether you can come up with a revised set of plans that at least try to address

concerns you've had? I'm not saying you have to, but....

ATTORNEY ARTHUR KREIGER: Yes, I will -- we will try to do that. I'd like as much direction as possible since the Planning Board liked these plans and didn't suggest anything else. I want to do --

BRENDAN SULLIVAN: I don't care much of what the Planning Board says.

ATTORNEY ARTHUR KREIGER: That's my starting point for something that I know they'll like. I'd like as much guidance tonight as the Board is willing to give about what you might find more appealing.

SLATER ANDERSON: I don't want to speak for the Board on the face mounting. I'm mixed on that, too. I'm trying to reduce the number of new protrusions off the top of the building. And I see the C side being it's a high visibility. You know, you look at the way Mass. Ave. bends in this location. This

is a view corridor right at that building. You see the dome and you pick up what is a nice, you know, the edge of that roof has some nice architectural detail to it. So you're -- you're impacting a high visual architectural significant view on Mass. Ave. in my opinion.

BRENDAN SULLIVAN: Personally what I would want someone to do is go out tomorrow or the next weekend and the next few days and take pictures without leaves on the trees.

CONSTANTINE ALEXANDER: Yes, I was going to say one piece of guidance is the next set of photo simulations you bring before us is without foliage. We want to see the worst case.

ATTORNEY ARTHUR KREIGER: I've never seen such photo sims but I assume.

JOSH DELMAN: Without foliage?

CONSTANTINE ALEXANDER: Yes.

JOSH DELMAN: We can revise them.

CONSTANTINE ALEXANDER: No. 2, you have to locate the chimneys or the structures above the roof area that minimizes the visual impact. And maybe facing more toward the residential neighborhood, but at least in terms of the overall community impact it's not as obvious.

And third to consider, because I think we have different points of view, more mounting on the side of the structure or the side of the chimney rather than --

ATTORNEY ARTHUR KREIGER: That's what I was going to ask about. We talked about chimney mounting, and I'm not sure that can be done with active chimney. Are you happier with a facade mounting below the cornice line?

CONSTANTINE ALEXANDER: I would. I can't talk for other Board members. If the corner is such that it's close to what the brick there, to me, it's not as much visual

impact. That's one person's opinion.

BRENDAN SULLIVAN: What is the equipment? I mean, are we talking something that's 18 inches by --

ATTORNEY ARTHUR KREIGER: The equipment's essentially shown on the plan with Z2 within that square chimney. Is that how -- how close is that to the actual?

JOSH DELMAN: If you're looking at --

ATTORNEY ARTHUR KREIGER: If you're looking at that, is that roughly the equipment?

JOSH DELMAN: It's basically a 52-inch panel anywhere from 15, 16 inches wide.

BRENDAN SULLIVAN: 13 to 16 inches wide. How high?

JOSH DELMAN: 52 inches.

BRENDAN SULLIVAN: How deep?

JOSH DELMAN: Three to four inches

deep. With that, in trying to minimize the impact again and proposing the chimneys, it's not just the antenna. There's cabling, there's amplifiers that go into those antennas. When you bring an antenna to a facade, you do actually have those wires, you do need to connect to the antennas to potentially.

BRENDAN SULLIVAN: It's more than just the device.

JOSH DELMAN: Having the chimneys all of that equipment is encased. It's cabled on the roof line below the parapet wall so you can't see it. So really the only impact you have is the top of that chimney rather than the antenna and the other pertinences that go along with that.

ATTORNEY ARTHUR KREIGER: You're going to have trade offs with that.

CONSTANTINE ALEXANDER: Did you identify yourself.

JOSH DELMAN: Josh Delman,
D-e-l-m-a-n.

SLATER ANDERSON: I would think the existing chimneys I probably wouldn't like it for the facade mount on the outside, but I'm thinking the inside of that chimney that's a tall chimney, you're still going to get your elevation. You're getting closer. The inside on the building.

ATTORNEY ARTHUR KREIGER: It's facing the wrong way though.

SLATER ANDERSON: If you've got three chimneys, you've got one on each end.

ATTORNEY ARTHUR KREIGER: The chimney at the given edge has to issue that way. You can't have this one shooting this way and one shooting this way.

SLATER ANDERSON: You don't have a raid --

ATTORNEY ARTHUR KREIGER: You've roofing of all the chimneys, all the

antennas?

SLATER ANDERSON: It has to be.

ATTORNEY ARTHUR KREIGER: For the reason Jobet explained you want the antenna toward the edge and he meant shooting off toward the edge.

CONSTANTINE ALEXANDER: We can't design it on the fly. You're getting some flavor of what we're thinking about. You might come back and give us good reason why you can't do it.

ATTORNEY ARTHUR KREIGER: I don't know if we're able to make changes.

CONSTANTINE ALEXANDER: Do you want to continue the case?

ATTORNEY ARTHUR KREIGER: We do. I guess the question is should I finish the presentation for the record and not to do it next time?

CONSTANTINE ALEXANDER: I don't think so. I want to hear the presentation if

you're going to come back with revised plans and photo simulations. In a sense it's going to be almost like a new case for us. Don't waste the time tonight. This is going to be a case heard. We've started the case so we're going to have the same five of us back before you.

ATTORNEY ARTHUR KREIGER: If the same five are willing to sit, we'll take them.

CONSTANTINE ALEXANDER: How much time do you think you need?

JOSH DELMAN: Two weeks we need.

ATTORNEY ARTHUR KREIGER: We'll be ready at the next hearing.

CONSTANTINE ALEXANDER: What is our availability?

SEAN O'GRADY: Let me say this, just for the record for transparency, I generally offer continuances in the order they were requested. We do have a request already in the file for a case and that would be the last

case in March of March 11th. And then the next opening after that isn't until April 8th.

CONSTANTINE ALEXANDER: Can we do March 11th?

SEAN O'GRADY: Well --

CONSTANTINE ALEXANDER: Who's the request for continuance?

SEAN O'GRADY: 1815 Mass. Ave. has a letter requesting and generally we go by the --

CONSTANTINE ALEXANDER: Okay. It would be the end of April.

ATTORNEY ARTHUR KREIGER: March 11th is not available?

SEAN O'GRADY: April 8th. That's already closed. The 25th of March.

ATTORNEY ARTHUR KREIGER: April 8th is the first choice.

CONSTANTINE ALEXANDER: Are people available? I'm available.

TIM HUGHES: I'm available as long as I don't get sequestered on the jury I'm sitting on.

SLATER ANDERSON: I may not be. Actually, I may not be.

DOUGLAS MYERS: I'm out of town and arriving late that afternoon and won't have any chance.

CONSTANTINE ALEXANDER: What's after April 8th?

SEAN O'GRADY: April 29th.

SLATER ANDERSON: That's fine with me.

ATTORNEY ARTHUR KREIGER: The problem is you're getting back late?

CONSTANTINE ALEXANDER: We have two problems that people are getting here late.

ATTORNEY ARTHUR KREIGER: Can we e-mail where you are? It's not going to be a lot of new material.

DOUGLAS MYERS: It's very

beneficial to sit down and read the file.

CONSTANTINE ALEXANDER: He's coming out of town on a business trip. He's not going to be able to review what you e-mail with him.

ATTORNEY ARTHUR KREIGER: A couple photos and plans.

SLATER ANDERSON: I can't be here.

ATTORNEY ARTHUR KREIGER: That settles it.

CONSTANTINE ALEXANDER: April 29th.

SLATER ANDERSON: Sorry.

CONSTANTINE ALEXANDER: So everybody is okay with April 29th going?

The Chair moves that this case be continued until seven p.m. on April 29th. It's a case heard. On the condition that the petitioner sign a waiver of time extending the time for a decision, and on the further condition on that the sign on the building be modified to reflect a new hearing date of

April 29th.

ATTORNEY ARTHUR KREIGER: And I take it this would need to go back before the Planning Board?

CONSTANTINE ALEXANDER: I think you should.

ATTORNEY ARTHUR KREIGER: If we're doing anything different?

CONSTANTINE ALEXANDER: Yes.
Brendan's comment notwithstanding.

BRENDAN SULLIVAN: No, you can tell them.

CONSTANTINE ALEXANDER: And also further, that the plans that you're going to come back with, modified plans and photo simulations and you will -- the photo sims -- that's your waiver, because you have to give us photo simulations with no foliage. Those have to be in our file no later than five, you know the drill, no later than five p.m. -- on the condition that the revised

photo simulations, revised plans, if there are going to be any, be in our public -- in our files by no later than five p.m. on the Monday before April 29th.

ATTORNEY ARTHUR KREIGER: What time on the 29th was it?

CONSTANTINE ALEXANDER: Seven.
All our continued cases will be seven.
Whether it's seven or not remains to be seen.

ATTORNEY ARTHUR KREIGER: Okay. We will do what we can.

CONSTANTINE ALEXANDER: You did a good job before with us.

ATTORNEY ARTHUR KREIGER: I seem to set the bar pretty high for myself. Thank you all.

(Discussion off the record.)

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9879, 8 Florence Street. Anyone here on that matter?

For the record, please state your name.

GUY STUART: My name is Guy Stuart. And it's the -- I just petitioned to enclose an existing front porch. There is -- there may be an old photo of the house from the 1960s. The porch once was enclosed.

CONSTANTINE ALEXANDER: Oh, it was?

GUY STUART: Yeah. And now it's open. And we just want to enclose it again.

CONSTANTINE ALEXANDER: And for -- are you coming from outside you have a buffer to the elements?

GUY STUART: Yes, a transition space. Very small transition space, place to put our shoes and coats.

CONSTANTINE ALEXANDER: And the porch right now is non-conforming? It's too close?

GUY STUART: Yeah, it's too close to the --

CONSTANTINE ALEXANDER: Street.

GUY STUART: Well, there's that and it's really a foot from our neighbor from the lot line what would be the, what would be the northwest side.

CONSTANTINE ALEXANDER: And that neighbor, have you contacted the neighbor?

GUY STUART: Yes, I've talked to him. I actually thought he might have written something, but it's actually one of your employees. Mike.

CONSTANTINE ALEXANDER: There's no -- nothing in the file. But we'll take

your representation.

GUY STUART: He has no objection.
He's fine with it.

CONSTANTINE ALEXANDER: And the side of this front porch you're going to enclose is approximately three feet six and a half inches by six feet two inches? And in the past --

GUY STUART: Right.

CONSTANTINE ALEXANDER: We've been reluctant to grant relief for people to enclose front porches when they're already in the front yard setbacks because of pieces of massing on the street. Usually those cases come -- speaking for myself -- they come to us for variances. You are seeking a Special Permit so it's a much lower standard of relief. And the nature of the front porch is not the regular front porch of a three decker that's quite massive in size. So to me at least, my observation, and this is not the

usual case that we turn down. But still, I would offer that as an observation to the other members of the Board.

BRENDAN SULLIVAN: If we turn our attention to the dimensional form, and it shows the existing length of the house, so it's 37 foot something.

CONSTANTINE ALEXANDER: It's going to go from 37 feet, seven inches to 42 feet one inch.

BRENDAN SULLIVAN: 37 feet something and three foot six. I don't know what that 37 -- there's a discrepancy.

CONSTANTINE ALEXANDER: You're off by a foot it looks like. I mean if you subtract 37, 7 from 42, 1 you don't get 36 or 0.2. You're close in the 0.6 and I don't have a calculator. If you subtract the 79.

BRENDAN SULLIVAN: There is a window. And I don't know where that 37 foot.

GUY STUART: Yeah.

BRENDAN SULLIVAN: But no matter.
Something doesn't add up.

CONSTANTINE ALEXANDER: Yes. It's
possible the form is wrong.

SLATER ANDERSON: Four feet six
inches is what that says.

CONSTANTINE ALEXANDER: Do you have
an explanation for Mr. Sullivan's question?

GUY STUART: The house has different
lengths, so I'm not sure what the discrepancy
would be, but....

BRENDAN SULLIVAN: I don't know
either.

CONSTANTINE ALEXANDER: We don't
know. We rely on you.

BRENDAN SULLIVAN: The question
that's hanging out there.

GUY STUART: I had two and a half
hours to go get my file that I left at home
and I didn't take advantage of that. I'm at
a disadvantage. But let me take --

BRENDAN SULLIVAN: I'm comfortable with granting relief if the enclosure is underneath the existing structure and does not exceed the existing front canopy whatever you may want to call it.

GUY STUART: The roof. Yeah, that's the intent. There's an existing roof. We're gonna just essentially put everything underneath that roof.

BRENDAN SULLIVAN: Is the three foot six and not the 42 whatever?

CONSTANTINE ALEXANDER: On the plans are --

SLATER ANDERSON: Looking at the plan right here.

GUY STUART: Does it include the steps?

SLATER ANDERSON: It's interesting that length of the side of the house is 34 feet, ten inches. And then unfortunately you punched a hole, I think it's four feet,

six and a half inches. And that brings us -- there's a rear porch; is that correct?

GUY STUART: Not anymore, no.
There's -- there's --

SLATER ANDERSON: There's something drawn on the plan.

GUY STUART: There's a dining room.

SLATER ANDERSON: This here.
There's a dining room in the back.

GUY STUART: Yeah. This is -- so this is the kitchen. And this is the dining room. And oh, sorry, yeah, there is. I'm sorry, yeah, this is just a platform porch. It's not --

SLATER ANDERSON: Okay. It's right here?

GUY STUART: Right.

SLATER ANDERSON: That's 34, 10 plus four, six and a half. 38, 39, four and a half.

GUY STUART: Uh-huh.

SLATER ANDERSON: Is the length from that point to the face there?

GUY STUART: And then plus three six and a half.

SLATER ANDERSON: Yeah, that gets us to --

GUY STUART: 342.

SLATER ANDERSON: The whole thing. I don't know what that 37, 7.

GUY STUART: Oh.

CONSTANTINE ALEXANDER: You show it as existing.

SLATER ANDERSON: This should be 38.

GUY STUART: That was a mistake on my part in entering it.

SLATER ANDERSON: That length right there really should be -- exclude the bay. But for purposes of this door for the porch, 34, 10, you got 38, 39, four and a half. That's what that number should be.

GUY STUART: That's what it says on

my part.

SLATER ANDERSON: And then you have 36 and a half on that.

CONSTANTINE ALEXANDER: If we grant relief it will be tied to those plans.

GUY STUART: Right.

CONSTANTINE ALEXANDER: You're comfortable with those plans?

GUY STUART: Yes, absolutely.

CONSTANTINE ALEXANDER: If not you have to come back before us.

GUY STUART: No, I'm totally comfortable.

CONSTANTINE ALEXANDER: Any questions from members of the Board at this point?

TAD HEUER: Just summarize for me what all that was?

SLATER ANDERSON: Here, you want to take a look?

TAD HEUER: No, I wanted a summary.

SLATER ANDERSON: He wrote the wrong numbers, the length of the building.

TAD HEUER: With the result that what to the extent that it matters here?

CONSTANTINE ALEXANDER: The numbers that are shown on this plan really are existing with the dimension of the existing structure.

SLATER ANDERSON: The dimensional form indicates that the front porch is actually four feet deep when it's actually the dimensional plan, the plan is correct we assume. 33 feet, six and a half inches. This indicates that it's actually larger. Four feet, six inches.

GUY STUART: It's a mistake on my part.

SLATER ANDERSON: We forgive mistakes.

BRENDAN SULLIVAN: The building inspector will look at that.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. I don't see anything in the file, any letters or the like. So questions, comments or should we go for a vote?

TAD HEUER: How much of the porch is to be lasting? Or is it a --

GUY STUART: There's gonna be a window on one side and then there's going to be a front door with two side panels, side lights. And then on the other side -- the side facing Mr. Grover's house, which is right near, is going to be just a wall. It's not gonna be a window.

SLATER ANDERSON: Why is that one walls?

GUY STUART: So that we can -- we're going to hang coats and stuff there. So

we're just -- if you had a window there, you would just see a bunch of coats hanging in the window. So we figure you're --

SLATER ANDERSON: And he's okay with that?

GUY STUART: Yeah.

CONSTANTINE ALEXANDER: All set?

The Chair moves that the -- we make the following findings with regard to the Special Permit being sought:

That enclosing this of the front porch of modest dimensions, roughly three feet, six inches by six feet, two inches would not cause congestion, hazard or substantial change in established neighborhood character.

That the continued use operation of adjacent uses would not be adversely affected by the proposed enclosure of petitioner having represented to us that he has spoken to the neighbor most affected by the enclosure in terms of the proximity of the

porch, and this neighbor has expressed no opposition.

That no nuisance or hazard would be created by enclosing the porch to the detriment, health, safety and welfare of the occupant or the citizens of the city. In fact, the welfare of the occupant of the house would be increased because we now have an ability to have a transition, a mud room if you will, or an area that would allow the elements not to go into the coldness of the elements go into the house once the door is opened. And that the proposed use would not impair the integrity of the district or adjoining district.

In fact, the relief as I've indicated, is quite modest in nature. And all it does is it encloses with some glass a porch that already exists. And this is -- for the record, this case does not involve a variance which is a more demanding standard.

And the Chair would reemphasize the modest size of the porch and, therefore, the modest impact of the enclosing of the porch.

The Special Permit would be granted on the condition that work proceed in accordance with the plans submitted by the petitioner. They're prepared by Austin Architects. They're two pages dated March 13, 2009. Both pages which have been initialed by the Chair.

All those in favor of granting the Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

(Discussion off the record.)

(10:20 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9881, 387 Huron Avenue. Anyone here wishing to be heard on that matter?

Please come forward. Give your name and address for the record, please.

NICOLAI CAUCHY: Nicolai Cauchy, C-a-u-c-h-y last name. N-i-c-o-l-a-i and I live at 387 Huron Avenue.

CONSTANTINE ALEXANDER: And you're seeking a variance to increase the size to build a pitched roof but the height of which will be 44 feet?

NICOLAI CAUCHY: Right.

CONSTANTINE ALEXANDER: And our

zoning law allows 35 feet.

NICOLAI CAUCHY: Right.

CONSTANTINE ALEXANDER: I would point out, we got quite a bit of correspondence on the file both pro and con on this matter.

NICOLAI CAUCHY: Yes.

CONSTANTINE ALEXANDER: To grant a variance you've got to demonstrate substantial unusual conditions involving the nature of the structure. Substantial impact and no impact on the integrity to derogate from the intent of our Zoning By-Law.

NICOLAI CAUCHY: Okay. The problem was that last winter I bought that house two and a half years ago, and the first thing I did was to insulate above my ceilings on the third floor. Last winter, not this current one, but the one last year we had an early snowfall in December and then we had a lot of very cold weather with alternating

snowfalls. By mid-January all of a sudden all my roofs on the third floor started leaking profusely. I went up to the roof in better cold weather and find about a foot and a half on average of wet snow that I proceeded to shovel with the help of one of my neighbors. And underneath the snow we found anywhere from four to about eight inches of solid ice that had completely included the central drain obviously resulting in this tremendous build up. We spent two days chiseling with sledge hammers, masonry shovels and with shovels and got off about 50,000 pounds of ice which seems consistent with the density.

CONSTANTINE ALEXANDER: How old is your house?

NICOLAI CAUCHY: 1927.

CONSTANTINE ALEXANDER: Obviously a lot of snow, and now and 1927, and why all of a sudden -- you're attributing the problem

now to the fact that you insulated the ceiling of the third floor?

NICOLAI CAUCHY: I think that's one factor. And what mostly had me much more or equally concerned was the international climate change has warned of significant increases in snow loading in our latitudes because of milder winters that are going to precipitate wetter snow. Now, up until now I know from everybody at the Inspectional Services that no other flat roof has been reported to have such a problem. However, coincidentally, and maybe this is reason for asking for a continuance, I have no reason of these procedural matters, but just in the last few days -- I'm a contractor. I was asked to go look at a house where they have a rubber roof that's been leaking. And I found that the membrane, the rubber membrane, and we're talking something that's 10 to 15 years old for some reason, and I can't say why

but it has been ripped from the flashing. The band that is -- that double flash so to speak, membrane along the outside edge for those of you who aren't in the know, on flat roofs typically you'll lay a rubber roof, you put a corner of metal flashing on the perimeter of the roof and then on to have many that you'll put a double membrane of rubber that will bind to the metal and through the rubber on the roof. That was completely sheered in several areas of the roof. I'm wondering, and I'm not saying if this is a fact, but I'm wondering if this could be the second case of the kind of mechanical problems that we're potentially going to be facing increasingly with something that we call climate change.

CONSTANTINE ALEXANDER: Well, as a Board we'll deal with climate change as it impacts the City of Cambridge. Have you investigated, are there other solutions to

your problem other than building a roof that goes 44 feet above the ground?

NICOLAI CAUCHY: Not really.

Actually, I went up to Maine and Vermont and New Hampshire to ask around from various builders and architects, and everybody there says 45 degrees is a pitch that they put just about everywhere to make sure that the snow goes off.

CONSTANTINE ALEXANDER: There are a lot of flat roof houses in Cambridge. I don't know what their insulation is on the top floor. Are there other solutions that they have used that allows them to deal with your snow problem that does not require raising the roof to 47 feet or 44 feet?

NICOLAI CAUCHY: 44 feet. Not to my knowledge. Every -- I as I've said, I've met a couple of flat roof owners, including my very neighbor who had her flat roof done about five years ago, and doesn't have a problem.

On the other hand, her flat roof has very limited insulation underneath it. Whereas, I just found everything I could in there.

CONSTANTINE ALEXANDER: The reason I'm mentioning all of this, we have very reluctant support, at least historically to grant variances for height.

NICOLAI CAUCHY: Sure.
Mr. O'Grady has told me that. And FAR, right?

CONSTANTINE ALEXANDER: And FAR. Depending how much FAR -- and you don't have an FAR problem here, do you?

NICOLAI CAUCHY: I'm non-conforming just as everybody else, and I believe that it's gonna be somewhat like.

CONSTANTINE ALEXANDER: You're right. Thank you.

You're going from -- if we grant you the relief you're seeking, 1.54 to 1.62 in a 0.5 district. So you're substantially

non-conforming and you wanted to increase it.

NICOLAI CAUCHY: Mr. O'Grady warned me these were the two issues.

CONSTANTINE ALEXANDER: You mentioned continuance, and I'm not knowledgeable in these matters. What we sometimes do or what the petitioner sometimes asks us to do when they come before us and sense a resistance on this Board or a sense that they've got problems with the neighbors and the problem that neighbors could result in an adverse decision, we continue the case on a future date and allow you to rethink what you wanted to do. See if you come up with a solution that's less intrusive from a zoning point of view or doesn't require any zoning relief at all. I don't know if that's possible. Not only do you have a problem with height variance which is something that's tough for us to grant, we don't like to do it, but you've got neighborhood

opposition.

NICOLAI CAUCHY: Yes, my neighbor is here and present.

CONSTANTINE ALEXANDER: So you've got -- to go forward with this case tonight, you've got a pretty tough road to travel down. That's fine, and I'm not crazy about continuing cases. Some days we've got to get the agenda finished. Those are the facts. If you think you could use some more time, a couple months to come up with a better solution, one that works with your neighbors, probably is in your self-interest to do that.

NICOLAI CAUCHY: Well, I would say to that, that initially when this problem happened, after taking off the snow and fortunately having a day where I can gauge the thing with more, you asked more modified rubber things on top, the first thing I did after that was come to the Inspectional Services to know whether there had been any

history of problems. None. I looked around, asked around, anybody from architects otherwise and nobody came up with any --

CONSTANTINE ALEXANDER: All that works against your case on top of everything else. The fact that the problem may be just peculiar to your structure and not to flat roof houses. If I were you, I think I would do some research and some investigation with people who own flat roof houses and see why they don't have a problem and you do. You attribute it to the nature of the insulation you pumped in and that may be right. I've said enough.

You want to go forward tonight or not? I don't think the Board members are very happy if I suggest one more continuance, but I think in fairness to you, I think I should point out to you that's an alternative you might want to think about. You've got to decide

tonight. We can give you sometime to get the case -- we can recess the case.

NICOLAI CAUCHY: No, I think at this point, okay, I will do it, continuance. Continuation?

CONSTANTINE ALEXANDER:
Continuance. We'll take care of the words. Continuance.

NICOLAI CAUCHY: Continuance. And I understand from what I've heard --

CONSTANTINE ALEXANDER: It's a case heard. We've got to get all five of us here. All five.

SEAN O'GRADY: April 8th is not good for you.

SLATER ANDERSON: Not for me.

SEAN O'GRADY: You're May 13th now.

SLATER ANDERSON: What happened to the 29th?

SEAN O'GRADY: It closed. We've got three.

TAD HEUER: Do you have anything administratively moved forward that's not going to actually happen?

SEAN O'GRADY: Is 45 Foster going to happen?

TAD HEUER: Anything like Hilles Library, the people at Crescent?

SEAN O'GRADY: No.

TAD HEUER: Where is Crescent?

SEAN O'GRADY: Well, Crescent is on. April 8th, that's still open.

CONSTANTINE ALEXANDER: He can't make it. Not this case.

TAD HEUER: We could put 1558.

BRENDAN SULLIVAN: Is it really a case heard? We scratched the surface, but it hasn't been a full presentation.

CONSTANTINE ALEXANDER: It hasn't been a full presentation. We haven't heard from the neighbors.

TIM HUGHES: I wasn't paying

attention.

CONSTANTINE ALEXANDER: Let the record show that Mr. Hughes was not paying attention.

I'm acceptable if everybody else is acceptable this is a case not heard.

SLATER ANDERSON: That would be better.

NICOLAI CAUCHY: Does that hurt me?

TIM HUGHES: It gets you an earlier date maybe.

CONSTANTINE ALEXANDER: It's not heard. We can have a hearing any day we pick because we don't need the same five people before you. If it's heard, you have to get the same five people.

NICOLAI CAUCHY: The same five people.

CONSTANTINE ALEXANDER: We can go to April 8th, for example, because we don't need Slater anymore. April 8th?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: We're going to continue this case to seven p.m. on April 8th and those the neighbors, we'll get to that in a second. Seven p.m. on April 8th on the condition that you sign a waiver of the time for us to render a decision. We require that because by law we have to render a decision very quickly.

NICOLAI CAUCHY: I'm not sure what that means, but I'll sign it.

CONSTANTINE ALEXANDER: And on the further condition that you take the sign that's in there, it was in the front yard, you've got to get it propped up or put it in the window.

NICOLAI CAUCHY: It's on the front fence with a photo rendition.

CONSTANTINE ALEXANDER: On that sign. You got a magic marker? Cross out tonight's date and put in April 8th.

NICOLAI CAUCHY: Will do.

CONSTANTINE ALEXANDER: All those
in favor of approving the motion so moved, say
"Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

(Alexander, Hughes, Sullivan, Heuer,
Anderson.)

(A discussion off the record.)

(10:30 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9882, 3-5 Watson Street. Anyone here wishing to be heard on that matter?

SCOTT ZINK: My name is Scott Zink, Z-i-n-k. I am here with architect John Rossi as well. R-o-s-s-i.

CONSTANTINE ALEXANDER: You're looking for a variance to rebuild a damaged roof and add ceiling height?

SCOTT ZINK: Correct.

CONSTANTINE ALEXANDER: And some

dormers?

SCOTT ZINK: Right now I have 29.2 and I'd like to raise it four feet.

CONSTANTINE ALEXANDER: And that's still within the --

SCOTT ZINK: It is.

CONSTANTINE ALEXANDER: No variance required for that?

SCOTT ZINK: Yes. My issue is I'm within setback on the left side which brings it non-conforming.

CONSTANTINE ALEXANDER: Okay.

SCOTT ZINK: That's it. I've got two shed dormers on the back.

CONSTANTINE ALEXANDER: The shed dormers don't quite comply with our dormer guidelines. Any reason why?

TIM HUGHES: Two out of three.

SCOTT ZINK: There's seven and a half inches. They're four feet from the side.

CONSTANTINE ALEXANDER: You go right to the roof line and you're not supposed to unless they're setback distance from each side and you're slightly less than that. So you're in substantial compliance with the dormer guidelines.

TIM HUGHES: That's three out of four.

SCOTT ZINK: 75 percent.

CONSTANTINE ALEXANDER: In deference to Mr. Hughes I can't be too hard on dormer guidelines because he'll get mad at me.

SCOTT ZINK: We're slightly below the ridge line.

TIM HUGHES: It is?

SCOTT ZINK: Slightly.

TIM HUGHES: I have to say I like what you're doing with the inside. I think it's a good use. A lot of work though.

(Discussion off the record.)

CONSTANTINE ALEXANDER: The dormer guidelines say that --

SEAN O'GRADY: If you go to the ridge you must be in three, six from the side. It's laid out in figure five or six or something like that.

CONSTANTINE ALEXANDER: It's slight.

Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

Members of our Board are going through the plans and stuff. Points I just want to make sure we say to everyone.

These are the plans we have in our file. If we were to grant relief, you've got to build in accordance with these plans. This is it.

SCOTT ZINK: That's it, yep.

CONSTANTINE ALEXANDER: Sometimes people come before us, architects in particular, with plans and they're not the final plans and then they get themselves in trouble later on.

SCOTT ZINK: I got you.

TAD HEUER: You have an empty lot to the east; is that right?

SCOTT ZINK: Yes.

TAD HEUER: My only question is I have a question always when this comes up on A8, it's more for the Board than the petitioner. It appears that windows are moving. I believe that's a setback. Am I correct? At least moving the windows in the setback.

SCOTT ZINK: That is we're adding and this is an omission of my fault, and I actually met with Mr. O'Grady. We do want to also -- just you see I have drawings here, had windows; two awning windows and a small

double hung window on that side. And actually on both sides.

TAD HEUER: And you're also moving the footprint, so to speak, of the window on the lower right in the first level, you've got a different window and a different configuration; is that right?

SCOTT ZINK: Well, what's going to happen? I'm lifting, raising the height of the floors up. I don't want my windows to sort of be -- I want them to be, to fit the brick. So I want to keep them off the floor.

TAD HEUER: Sure. And that's entirely understandable. But looking from the outside, if I didn't know what was inside the house, the window would be moving, right?

SCOTT ZINK: Correct. Yeah.

TAD HEUER: In which case as I'll say frequently, there is no relief in a variance for moving a window. In my opinion I believe it has to be a Special Permit and I would not

support this on a variance. But I would like to be outvoted. I'm saying we can't keep granting variances where a window for Special Permit access.

CONSTANTINE ALEXANDER: You can grant at variance. They can't meet the standard.

TAD HEUER: Yes. We can grant lots of things. We'll be overturned by lots of people for doing it.

CONSTANTINE ALEXANDER: So you would have them re-advertise for a Special Permit for the windows?

TAD HEUER: I would.

CONSTANTINE ALEXANDER: As well as a variance that they're seeking now?

TAD HEUER: I have no problem with the variance they're seeking now.

CONSTANTINE ALEXANDER: Yes.

Other members of the Board have a view on this? Tad has brought this up before.

BRENDAN SULLIVAN: I think he's right. It's a shame so on and so forth, but I think we need to tighten up on that.

CONSTANTINE ALEXANDER: Okay. I have no problem with that.

BRENDAN SULLIVAN: So what that means is that we'll be granting you relief to do all your other stuff, and the dormers and what have you, but you have to hold on the windows until you come back and get the relief on that.

SCOTT ZINK: Okay. Is it possible to go to the neighbors directly and have them --

CONSTANTINE ALEXANDER: No. That doesn't solve the problem.

TAD HEUER: This is more of a Board issue.

CONSTANTINE ALEXANDER: It's the way our Zoning By-Laws are written. It's a legal issue if you will. But it comes from

the wording of the Zoning By-Laws.

SCOTT ZINK: Okay.

CONSTANTINE ALEXANDER: You know, if you have windows in the setback, you need a Special Permit. And the variance of the porch is not available to you. So which means you have to -- we can grant relief tonight on everything but the window locations.

SCOTT ZINK: Okay.

CONSTANTINE ALEXANDER: How quickly can he come back to get re-advertised? You want to move ahead?

SCOTT ZINK: I'd like to frame the windows and know where they're going.

CONSTANTINE ALEXANDER: If he moves quickly, how quickly can we get him back before us?

SEAN O'GRADY: Sometime in March. I'm not sure when in March.

CONSTANTINE ALEXANDER: That's

plenty of work you can do before March.

SLATER ANDERSON: You can do all the roof work.

SCOTT ZINK: I'll doing everything.

BRENDAN SULLIVAN: You want to get the application in quickly.

CONSTANTINE ALEXANDER: If you get it in quickly, that's the date that's why I was asking Sean.

Ready for a motion?

The Chair moves that we grant the petitioner a variance to rebuild an existing damaged roof and add ceiling height to the second and third floors and to build two dormers on the rear of the building on the basis of the following findings:

That a literal enforcement of the provisions would involve a substantial hardship to the petitioner. The work is necessary to make this structure more habitable and would improve the aesthetics

and habitability of the structure.

That the hardship is owing to circumstances relating to the shape of the building. The building is non-conforming now.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the purposes or intent of this ordinance.

The finding would be based on the basis that no neighborhood objections have been raised.

That the dormers themselves would be a substantial compliance with our dormer guidelines, and that the proposed work is consistent with the Zoning By-Law to upgrade and to expand our housing stock in the city.

The motion would be -- the variance would be granted on the condition that work proceed in accordance -- I'm going to get to your point -- the plans are prepared by BRC

Bareneson, B-a-r-e-n-e-s-o-n Rossi

Collaborative dated December 15, 2009.

They're numbered A1 through A8. The first page of which has been initialed by the Chair. Provided, however, that the plans and the variance being granted do not permit the relocation of windows that's shown on the plans.

So that you will not have relief -- you don't have our approval yet to relocate the windows that are shown in the plans. You have -- this is not part of the motion, but you have to file a Special Permit.

SCOTT ZINK: Separate application.

TAD HEUER: Are you moving windows other than -- he wants the front.

SCOTT ZINK: The front and the rear I can do?

CONSTANTINE ALEXANDER: Yes. Only the ones that require relief for a Special Permit.

SCOTT ZINK: Even next to a vacant lot?

TAD HEUER: Yes.

SEAN O'GRADY: Let's investigate it for a second. You own an adjoining lot?

SCOTT ZINK: I'm next to a vacant lot.

SEAN O'GRADY: You don't own it?

TAD HEUER: Yes. That was my question.

SCOTT ZINK: No, I don't own it.

SEAN O'GRADY: That's why you were objecting.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: All those in favor of granting the variance so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer

Anderson.)

(Discussion off the record.)

(10:40 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case 9883, 29 Blake Street. Anyone here on that matter?

Please come forward. You had a variance to build a dormer and now you want to change a window location and you want to also add a skylight to the dormer?

JEANNIE SEIDLER: The previous owners got a variance ten years ago.

CONSTANTINE ALEXANDER: So

technically because you were doing something different than the variance allowed, you've got to get relief before us. I have no questions at this point. I think the relief is quite obvious on its face. I mean, it's just a technical requirement in our Zoning By-Law. And the reason you want the skylight and the relocated windows?

JEANNIE SEIDLER natural light.

CONSTANTINE ALEXANDER: More light. Improves the habitability of the dormers. And these dormers, what was -- you probably don't know there's an FAR problem.

DANIEL ANDERSON: The original variance was FAR. A hundred or so square feet.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: No one

wishes to be heard.

The Chair will move to grant a variance to the petitioner to increase the width of an existing third floor dormer window on the east side elevation and the addition of one skylight on the dormer roof. The Board will make the following findings:

That a literal enforcement of the provisions of this ordinance would involve a substantial hardship to the petitioner. The hardship being that the dormer which this Board has previously approved was not as habitable and is not as useful for living purposes as would be the case if we grant relief.

That the hardship is owing to the shape of the structure. The structure being a non-conforming in terms of the FAR. So any relief requires a variance.

And that we can grant relief without substantial detriment to the public good.

In fact, the skylight will have no impact on anyone other than the people who are living in the dormer or using the dormer. And there would be no privacy issues relating to the relocation of the window.

I should ask is the neighbor most affected by the relocation of the window -- have you spoken with that neighbor? Any objections?

JEANNIE SEIDLER: No.

CONSTANTINE ALEXANDER: No neighborhood objection. And that generally this would improve the habitability of the building itself.

The variance will be granted on the condition that the work proceed in accordance with plans submitted by the petitioner prepared by Design Consultants, Inc. We have -- I'll identify all four. These are the -- you're not going to change anything?

DANIEL ANDERSON: No.

CONSTANTINE ALEXANDER: Four pages all of which have been initialed by the Chair and are contained in the file.

All those in favor of granting relief, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: All in favor.

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

(10:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9885, 1815 Mass. Ave. Anyone here wishing to be heard on that?

(No response.)

CONSTANTINE ALEXANDER: We're going to continue this case.

SEAN O'GRADY: We promised them March 11th.

CONSTANTINE ALEXANDER: The Chair moves this case be continued until seven p.m.

on March 11th on the condition that the petitioner sign a waiver for time of rendering our decision. Have you signed that?

ATTORNEY ADAM BRAILLARD: I have not.

SEAN O'GRADY: 1815.

CONSTANTINE ALEXANDER: And on the further condition that the sign on the property be modified to reflect the new hearing date.

ATTORNEY ADAM BRAILLARD: Yes.

CONSTANTINE ALEXANDER: All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

(Discussion held off the record.)

(10:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9886, 678 Mass. Ave. Anyone wishing to be heard on that?

ATTORNEY ADAM BRAILLARD: Yes. Mr. Chairman, thank you, members of the Board, Adam Braillard for the record, with the firm of Prince, Lobel, Glovsky and Tye. With me is Kaleem Khan. He is with the radio frequency department and here to answer any questions that the Board may have.

We're here in connection with a Special Permit to modify an existing wireless communications facility on the rooftop located at 678 Massachusetts Ave. The big building there in Central Square. It's located in the Business B Zoning District.

CONSTANTINE ALEXANDER: You're adding three antennas?

ATTORNEY ADAM BRAILLARD: Right. Three dish antennas.

CONSTANTINE ALEXANDER: This is new.

ATTORNEY ADAM BRAILLARD: In addition to what's up there now. In addition to what's up there now and also in addition to what this Board approved three and a half years ago, the WI MAX panel antennas. Now we're going for the dish antennas.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ADAM BRAILLARD: So the three dish antennas each will be two feet in

diameter and will be painted to match their background. First dish antenna will be mounted on the existing chimney that will be facing west. So it would be -- if you're on this roof, that's the one you'd see. The chimney that faces toward where we're located here, there would be one chimney here. There would be a pipe mounted on that chimney and painted. The hardware and the antenna will be painted the color of the chimney. The second dish antenna will be mounted on the penthouse setback from the edge of the roof and also painted to match the yellow stucco color of that penthouse side. The third antenna will be mounted on the opposite side of the penthouse also set back from the roof and painted to match the color and texture or color of that background. We met with the Planning Board on the 5th, the Planning Board had no concerns.

CONSTANTINE ALEXANDER: We have a

letter which I'll read into the record.

ATTORNEY ADAM BRAILLARD: Great.
And that's essentially the proposal.

CONSTANTINE ALEXANDER: The Chair will read into the record, we have a letter addressed to us from the Planning Board dated January 27th regarding this case. And very simply the Planning Board reviewed this application and has no objections to the proposed installation or location of the antenna on this building.

TAD HEUER: I see on your tab you have a proposal for a coverage map. I presume that what I'm looking at here is what the coverage you'd get off of these new antennas; is that right?

ATTORNEY ADAM BRAILLARD: Right, yes. Actually, there is -- that's the coverage map from the already approved WI MAX antennas.

TAD HEUER: Okay.

ATTORNEY ADAM BRAILLARD: The dish antenna. We put that in there just so the Board would understand the concept of what Clearwire is trying to do. I've explained that for this Board and I can do that again for the record here.

The actual dish antennas which are backhaul, essentially equivalent to anywhere from 300 to 400 T1 lines doesn't have a propagation. They're line of sight and they need to see the next one and then to the next one. And then you need two, sometimes three. In this case three where the emissions come in and get protruded out to the next and hops all the way to the hub and then the hub transmits it into the land line to the switch.

TAD HEUER: These are essentially relay antennas, right?

ATTORNEY ADAM BRAILLARD: They're broadband relay antennas.

TAD HEUER: Can you go over, and I

know you said line of sight, can you provide something for the record to demonstrate that you're trying to minimize the number of line of sight antenna that you need in the city overall? Because all we see right now obviously is the building you need them from. Give us a sense of distance and how you're strategically planning this so overall we have a minimal number transfer of backhall antennas through the city to meet your needs.

ATTORNEY ADAM BRAILLARD: Can you answer that?

KALEEM KHAN: Yes. Kaleem Khan from Clearwire. This is like a mesh. And what we're trying to do is route the traffic for one backhall dish to the other. And because it's a WI MAX, it's a broadband wireless internet because people download the data and upload the data and we need a big site. That's why we need the dishes. And how the dishes are placed from one site to the

other site and it minimizes the number because we have the intensity on the delay and we cannot -- anywhere service is, which is from the WI MAX.

And secondly, in the antenna -- these are very optimal number of antennas and providing us the best and also it would cost low. Because we can afford more than -- we cannot put a lot of them everywhere. So I guess that's the question.

TAD HEUER: And just to get a sense of how you know what's the distance, what's the maximum if you have a clear line of sight and you're mounting up on the tallest buildings you've got, what's the distance that they'll work before they start to deteriorate?

KALEEM KHAN: It depends based on the WI MAX. It depends on the clear line of sight from one site -- from the one hop to the next hop and the distance half a mile to like

a two miles, and the dish site and we are using because we need a lot of capacity especially in the Cambridge area.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Any other questions? Comments?

TIM HUGHES: At what point in this century will we have Cambridge totally saturated? You won't predict that for us.

ATTORNEY ADAM BRAILLARD: Can't predict that. What we try to do is --

TIM HUGHES: Why don't they just build better antennas, don't need as many?

ATTORNEY ADAM BRAILLARD: I think the problem is with the client users -- not a problem, but it's, its actually a reaction. You know, all the carriers are in reactive mode. All the customers are using their -- originally the phone was in your car and that was it. It was hardwired to the car. Some people had that. And then some people

had phones that they carried just when they went outside. And now it's not so much an accessory as it is now a necessity. And I don't know if any of my friends who actually have a land line. They all have -- unless it comes in a three for one package. You know, they all have mobile phones. And not only do they have the mobile phones that talk, they have mobile phones that text. The Blackberry and the smart phones, too, to go online.

SLATER ANDERSON: Are you suggesting that the internet is here to stay?

ATTORNEY ADAM BRAILLARD: I'm suggesting that.

BRENDAN SULLIVAN: I guess we'll ask the question. Can somebody produce a map of the city of Cambridge and that -- I want to see where Verizon has their locations and their coverage and they can be green, you know. You guys can be red. Somebody can be

blue. But we need to color code where all this is because these things are sprouting up worse than mushrooms.

ATTORNEY ADAM BRAILLARD: My colleague --

BRENDAN SULLIVAN: And I know the technology is constantly changing so the devices constantly have to change to keep up with every time your boss comes up with a new device or something like that. But we're just littering the landscape with all these things. And, again, as long as there's a property owner who wants to get the five or six or seven, eight or ten thousand dollars a month for sure put it up there. And that's probably cheap. I mean, it's --

SLATER ANDERSON: What's the best solution?

BRENDAN SULLIVAN: A satellite perfectly fixed just beams.

SLATER ANDERSON: To get your map.

To get like an illustration that we can pull out every time we get one of these.

ATTORNEY ADAM BRAILLARD: A town like Lincoln and I think Bedford did it. They asked the applicants -- they asked all the major players, all the wireless carriers to meet and they met with a special subdivision of the Planning Board or, you know, a specially tasked force of the town representing the city and said okay, we need to figure out a plan going forward. We clearly don't have one. You folks come to us in piece meal and we need to nail this down. And it seemed to work out pretty well. They came up with an overlay district and it's worked pretty good so far.

BRENDAN SULLIVAN: It would be nice to get that communication subcommittee and they're dealing with chickens and ducks and electing a Mayor.

ATTORNEY ADAM BRAILLARD: I'm sure

Sean can handle it.

SEAN O'GRADY: Thanks, Adam.

BRENDAN SULLIVAN: What it takes is each individual carrier when they come down before us, let them produce a map. We will get a map from Community Development and, say here guys, before you come down and ask for another antenna or a backhall, we want to know where your installations are and we want to know what that coverage is. And if we need to take those five or six maps and lay them over one another, then we do. But right now, as I said earlier, and you know Adam just said now we're getting this piece meal.

CONSTANTINE ALEXANDER: We can require every time we get an application for another antenna that Sean advise whoever the applicant is, that in part of your plans you better submit this map so you have existing coverage.

BRENDAN SULLIVAN: You're going to

be asked it and you're going to produce it or it's going to be --

ATTORNEY ADAM BRAILLARD: I heard other towns and it's concerning for them.

CONSTANTINE ALEXANDER: You're going to be before us in two weeks. You couldn't get the map to us in two weeks, can you?

ATTORNEY ADAM BRAILLARD: Well, I can't remember what that actually -- with this type of technology, with the backhall dishes, it's really, it's really, you can't map that. It's a line of sight. It's like a make believe laser going from one backhall dish to the other. What we can do is better show you where the sites are that we have proposed for the backhall dishes. The other sites that we're also working in town are backhall and the WI MAX that we're -- what we'll do is have -- we have no -- we have one WI MAX installation approved in town that was

over on 20 Sidney Street a couple months ago. There's this one in front of you that's been approved prior and we're working on backhaul. We'll map all of the -- none of the WI MAX has actually been installed. We'll map not what's on air with respect to WI MAX but what's been approved and that will show this Board the holes in the WI MAX network in town, and I think that would be a much better. We can put it up on a board so you can see it.

CONSTANTINE ALEXANDER: And, Sean, the other carriers when they come in, educate them as to what this Board is going to want in terms of maps.

SLATER ANDERSON: What we need actually is not -- I mean, the maps are nice, but the digital layer that shows, and it's the coverage and the equipment. It's like we have equipment located at this point and the coverage. So there's -- I mean, I used to do a lot of this GIS mapping stuff with the

previous job. With the GIS Department in the city you get a layer that's geographically referenced that says here are all our facilities from each carrier and here's the coverage area that those facilities, you know, cover. That's, that's the layer. And then it's easy to put them all together in the computer and turn on Verizon, turn on AT&T, turn on Metro PCS and see what all of the -- because from our perspective it's the vision -- we're dealing with the visual impact of the facilities. You guys are coming at it from we need physical, you know, equipment that gives us the coverage we need. So there's sort of this marriage between the coverage and the facility. I think we need a -- the requirement should be for a digital submission of some kind to somebody in the city that can collect that and have it, you know, as an active layer of information that we can have periodically a map produced that

says, you know, here's the current status and stuff. Because we do deal with these in a vacuum. We get an application and we're like -- it would be helpful to know right next-door there's three carriers in the next building. I mean, that seems like --

BRENDAN SULLIVAN: Or we grant this that there's going to be three carriers, one the next, two or three buildings marching up Mass. Avenue.

SLATER ANDERSON: This is not your issue but this has come up.

BRENDAN SULLIVAN: You're getting some push back from other towns and communities as far as a plethora of antenna and facilities I would think.

ATTORNEY ADAM BRAILLARD: Yes, sure. You know, this type of installation has been received, has been favorably received because it's on existing facilities and we're adding too many more additional

antennas. But sure, in past we were trying to build an installation.

TAD HEUER: Or your colleagues from competitors.

ATTORNEY ADAM BRAILLARD: Sure. Like I said, it's, it's very difficult to build a new installation these days. And I'm not speaking about this facility, but generally there's more capacity issues than there is coverage. There's more people on the network. So you look at the network like a kind of like one of those moving walkways in the airport, and network can only hold -- that walkway can only hold so many calls, and once it's all filled up and another person makes a call, that person at the end of the walkway falls off or drops off and there is your dropped call. You need to widen that walkway, be able to fit as many people that you need to. And in order to do that, your sites get lower and they get closer

together. And they go in residential areas. Whereas, in this town it's extremely difficult. So, that's the issue that we have to address.

TAD HEUER: But as to the matter at hand.

CONSTANTINE ALEXANDER: Make a motion?

The Chair moves to grant the petitioner a Special Permit to proceed with the addition of three wireless backhaul dish antennas to the applicant's existing and previously wireless communication facility currently operating on the rooftop of the building at 678 Mass. Ave.

The Board finds that the petitioner has demonstrated that they are an FCC licensed carrier in good standing.

That they've taken steps to minimize the visual impact of the various elements of the facility. Through the use of materials

and paint -- that blend with the materials on the facilities by virtue of where they're going to be located on the roof. So effective means have been made to reduce the impact of the facility.

The Board would further find that locating this equipment will not affect traffic or patterns of access or egress or cause congestion or substantial change in established neighborhood character.

That the continued operation of adjacent uses would not be adversely affected by the proposed equipment addition, and no nuisance or hazard would be created to the health, safety or welfare of the occupant or the citizens of the city. And that the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this ordinance.

The motion further to the Special

Permit would be granted on the condition that work proceed in accordance with plans submitted by the petitioner. They're numerous in nature, but the first sheet is entitled T-1 prepared by -- they're dated 11/17/09 and initialed by the Chair.

Further, that the work proceed in accordance with or be consistent with photo simulations submitted by the petitioner prepared by Bay State Design, the initial page has been initialed by the Chair.

And the further condition that should you cease to operate the telecommunications on this building or for any period of six months or more, that the equipment be removed promptly and the building be restored as nearly as possible to its pre-installation condition. All set?

All those in favor of granting the Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. You have your Special Permit.

(Alexander, Hughes, Sullivan, Heuer, Anderson.)

(Meeting adjourned at 11:10 p.m.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 12th day of February 2010.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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